

# ***EXHIBIT C***

IN THE UNITED STATES DISTRICT COURT  
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA  
CHARLESTON DIVISION  
CIVIL ACTION NO. 2:13-cv-4178

KATHERINE JEAN HARTUNG, :

:

Plaintiff, :

:

vs. :

:

REGINALD KENNETH YELVERTON and :

ADVANTAGE TANK LINES, LLC d/b/a ATL :

LEASING, INC., an Ohio Corporation, :

:

Defendants. :

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MAY 20, 2014  
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Oral deposition of SCOTT L. TURNER, taken pursuant to notice, was held at BEST WESTERN PLUS MORRISTOWN INN, 270 South Street, Morristown, New Jersey, commencing at 10:13 a.m. on the above date, before GINA A. FAROLDI, a Certified Court Reporter of the State of New Jersey.

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1 S C O T T L. T U R N E R,  
2 63 Wishing Well Road, Columbia, New Jersey 07832,  
3 sworn, testifies as follows:

4 BY MR. MONTGOMERY:

5 Q. Good morning, Mr. Turner. My name is  
6 Tim Montgomery. We were introduced previously.  
7 We're here today to take your deposition as a result  
8 of an expert report that you have filed in the case  
9 of Katherine Hartung versus Advantage Tank Lines,  
10 Inc., Reginald Kenneth Yelverton, which has been  
11 filed in the United States District Court for the  
12 Southern District of West Virginia.

13 I am assuming you have probably had  
14 your deposition taken prior to today.

15 A. I have.

16 Q. How many times, roughly, if you could  
17 estimate?

18 A. Maybe a dozen?

19 Q. There are a couple of ground rules  
20 that I would like to go over before we start taking  
21 the deposition. I am sure you probably heard these  
22 before. I think that we need to be consciously  
23 aware of them so that the court reporter can take  
24 down everything we are saying with accuracy and  
25 clarity.

1 First, I am going to ask that you let  
2 me finish asking my questions before you start to  
3 answer. We tend to probably get conversational. It  
4 is human nature to do so. At the same time, I will  
5 try and extend that same courtesy to you and let you  
6 finish answering before I start asking. If we start  
7 talking over each other, the court reporter is not  
8 going to be able to take down what we say.

9 The second thing, I am going to ask  
10 that you please keep all of your responses verbal.  
11 You cannot nod your head, um-hum, things of that  
12 nature. "Yes" and "No" is the appropriate method of  
13 answering questions when there is someone  
14 transcribing what we are saying.

15 Third, if you need to take a break at  
16 any point in time, just please let me know. This is  
17 not a test of your endurance or mind, although from  
18 what you were telling me earlier, you shouldn't have  
19 an issue with sitting here for an extended period of  
20 time. Like I said, if you do need a break, please  
21 let me know. I can certainly afford that to you.

22 Mr. Turner, you authored a report in  
23 this matter on March 25, 2014. Correct?

24 A. Yes, sir.

25 Q. Did you, at some point in time, also

1 provide your CV to plaintiff's counsel?

2 A. I did.

3 MR. MONTGOMERY: I am going to go  
4 ahead and mark, as Exhibit A, Mr. Turner's CV.

5 (Exhibit A, Curriculum vitae, marked  
6 for identification.)

7 Q. Mr. Turner, I am handing you what has  
8 been marked as Exhibit A. Is that a copy of your  
9 CV?

10 A. It is. It's not the most current.  
11 But, it is -- it is, nonetheless, a copy of my CV.

12 Q. Is it possible to get an updated  
13 version of that?

14 A. You bet.

15 Q. If you can give that to counsel, she  
16 can give it to me. That would be great.

17 A. Yes, sir.

18 Q. With respect to your background,  
19 could you give me the highest level of education  
20 that you have achieved?

21 A. Yes, sir.

22 It was -- I graduated high school.  
23 No college education.

24 Q. No college or any graduate school or  
25 anything of that matter?

1           A.           No, sir.

2                       My -- all my training is relative to  
3   commercial motor vehicles predominantly. Commercial  
4   motor vehicles in one respect or another, whether  
5   safety or, you know, things of that nature.

6           Q.           Let's focus in on that. What  
7   training have you had with respect to commercial  
8   motor vehicles?

9           A.           Well, one of the things that's not on  
10   the current -- it's not on this version of the CV  
11   here is NATMI, which is North American  
12   Transportation Management Institute. I completed  
13   their course on supervisors and also transportation  
14   director for -- under NATMI. Again, North American  
15   Transportation Management Institute.

16                     I've also attended a week long  
17   program by the Institute of Technology & Management,  
18   which is out of Jacksonville, Florida on commercial  
19   motor vehicle crash investigation. They get into  
20   reconstruction aspects and so forth and that.

21                     A plethora of courses through New  
22   Jersey State Police, where actually I've been an  
23   FMCSA trained individual for roadside inspections.  
24   So, I'm trained essentially to the level of when  
25   you're driving down a highway and you see a trooper

1 underneath a truck with a creeper inspecting the  
2 brakes and so forth, I'm trained to that level.  
3 Also, that involves post crash, as well on  
4 commercial manufactures.

5 I'm trained as a -- that's level one  
6 FMCSA, by the way, which is the highest level with  
7 respect to roadside inspections.

8 Also trained under -- as a hazmat  
9 inspector. Roadside hazmat inspector. So, checking  
10 cargo on trucks for compliance with the PHMSA,  
11 Pipeline and Hazardous Materials Safety  
12 Administration.

13 Also weights and measures. I've been  
14 trained under the weights and measures master, which  
15 involves with dealing with truck weights, as well as  
16 widths of vehicles -- legal widths and so forth.  
17 Lengths of vehicles.

18 Been also trained as a cargo tank  
19 truck specialist. Also, I was a 11 year instructor  
20 -- lead instructor with the New Jersey State Police  
21 for cargo tank truck emergency disasters and  
22 response and incidents. So, dealing with any type  
23 of -- with respect to MC 306/DOT 406 cargo tank  
24 trucks, which is petroleum carriers. I also trained  
25 a lot of the aspects of -- which would be similar to

1 this type tank truck here. MC 307/DOT 407, which  
2 are chemical carriers. Although this tank truck  
3 that was involved in this incident here, to the best  
4 of my knowledge, was a nonspec cargo tank, which  
5 would not meet any of those requirements. But, you  
6 still, nonetheless, would have slosh and surge  
7 factors and things of that nature that applied to  
8 it. And rollover factors.

9 University of Findlay advanced  
10 emergency response of cargo tank truck. I've been  
11 trained on that, as well out of Ohio.

12 University of Medicine & Dentistry  
13 hazardous waste site investigation, which I'm not  
14 gonna talk about the nonrelevant courses.

15 Q. Let me ask you that.

16 A. Well, there's one last one, which I  
17 think is important.

18 Q. Please.

19 A. Smith System. Smith System driver  
20 training. I'm an instructor in that, as well.  
21 We're training individuals on the Smith System on  
22 proper and safe methodologies of operating  
23 commercial and/or fleet type vehicles.

24 Q. Out of the training that you just  
25 talked about on the record, can you identify which

1 areas that you just discussed were applied in your  
2 investigation of this matter?

3 A. I think it really is kind of a  
4 combination of all of them for the most part. At  
5 one point in time or another, in the training and/or  
6 being an instructor --

7 Q. For instance, you talked about  
8 rollover prevention. I don't know that that  
9 necessarily would be applicable to this crash.

10 A. No. It wouldn't -- it would not be  
11 -- no. It wouldn't be applicable to the crash.

12 Not only that, you're dealing with a  
13 material for slosh and surge factors. You're  
14 dealing a material that's very viscous. So, you're  
15 not going to have the slosh or surge factors that  
16 you would have with say like gasoline or something  
17 to that effect. Because it's an elevated  
18 temperature material. Meaning that it's rather  
19 thick, if you will.

20 Probably, the course that would stand  
21 out most would be Institute of Police Technology &  
22 Management, IPTM. That has a lot to do with it.  
23 Commercial motor vehicle crash inspection  
24 investigation. That has a lot to do with it. So,  
25 FMCSA level one would have a lot to do with it.



1                   Also, one other one would be, not  
2     listed on the CV, NATMI training, getting into  
3     investigation of crashes -- post crash incidents.

4           Q.           You mentioned the IPTM training as  
5     being applicable and specific to the opinions you  
6     formed in this crash. Correct?

7           A.           It would be relative. Yes.

8           Q.           When did you go to the IPTM school?  
9     Do you remember?

10          A.           I would say probably -- I'm gonna  
11     take a guess and say maybe three, four years ago.

12                   This is all, obviously, in addition  
13     to the excessive experience -- the considerable  
14     experience that I have in dealing with crashes over  
15     the 20 plus years.

16          Q.           Sure. I think you mentioned earlier  
17     that the IPTM school has actually taught you how to  
18     do a post crash analysis.

19          A.           It was more -- not necessarily -- I'm  
20     not going to say not teaching me. But, it's more or  
21     less affirming a lot of the things I already knew  
22     based on the experience of 20 plus years. A lot of  
23     it is just commonsense that now is more or less  
24     defined in words in a book, if you will.

25          Q.           Did you receive any sort of

1 certification for attending the IPTM class?

2 A. I did.

3 Q. Do you currently have that  
4 certification?

5 A. I do.

6 Q. Do you remember who your instructors  
7 were at the IPTM?

8 A. They were two fellas from down in  
9 Georgia. Georgia and I think Jacksonville. I can't  
10 place their names. Actually, I went out -- I took  
11 them out to dinner on the last day. We got to know  
12 each other pretty well. But, I don't recall their  
13 names offhand. It's been three or four years now I  
14 guess it's been.

15 Q. Do you remember who the author of the  
16 materials that were used for the IPTM course were?

17 A. One of the instructors is one in the  
18 same. He was also the author of the book that we  
19 utilized.

20 Q. Do you remember what his name was?

21 A. No. Again, I don't remember the  
22 instructors' names.

23 Q. Did you ever, at any point in time --  
24 was the name Steve Rickard mentioned? Does that  
25 name ring a bell at all?

1           A.           I'm -- not offhand. I don't -- I  
2   don't believe so.

3           Q.           The reason why I ask, I will relay  
4   this to you, he is our -- we are using him as an  
5   expert in this case. I know that he teaches at IPTM  
6   quite extensively and frequently. I know that he  
7   has authored a lot of the materials. I was just  
8   wondering if there was any sort of connection there.

9           A.           Well, IPTM has a lot of instructors.  
10   There's a lot of adjunct instructors that are  
11   involved over there. I just don't -- I don't  
12   recall. I don't believe he was. I don't believe  
13   that he was. You know, I could be mistaken. But,  
14   I'm pretty sure he wasn't.

15          Q.           Maybe not on that particular day. I  
16   can relate to you that he is involved extensively --  
17   University of North Florida IPTM course. Is that  
18   what we are talking about?

19          A.           Yeah. It's a big program. It's  
20   actually considered to be one of the lead programs  
21   in the country.

22                        So, they've got a lot of adjunct  
23   instructors similar to what I have done as an  
24   instructor with the New Jersey State Police. There  
25   was probably about 24 of us that were, you know,

1 teaching.

2 I've trained folks from New York City  
3 fire and hazmat, New York emergency -- ECU -- ECS.  
4 You know. Boston and, you know, Philadelphia and so  
5 forth. So, it's somewhat similar in that regard I  
6 guess.

7 Q. When you were at IPTM, did they teach  
8 you the principals of say accident reconstruction?

9 A. Yes. There were -- there was  
10 training issues on that.

11 Q. At IPTM, were you trained on  
12 perception-reaction time?

13 A. There was -- it was part of it. I'm  
14 not going to say -- it certainly was not the entire  
15 course. But, to the best of my recollection, that  
16 was part of it.

17 Q. They taught you about how to apply  
18 perception-reaction to an automobile accident such  
19 as this one?

20 A. Yes. But, I don't do cars. I don't  
21 get involved with reaction times of cars and stuff.  
22 I get involved with the react -- I shouldn't say  
23 reaction time of cars. But, I don't get involved  
24 with accident reconstruction with car on car.  
25 Strictly it's -- it has to have a commercial motor

1 vehicle involved for me to get involved.

2 Q. Did you actually do a reconstruction  
3 of this accident? A formal reconstruction.

4 A. I wouldn't call it necessarily a  
5 formal reconstruction. I did a -- I did a  
6 reconstruction as looking at it and breaking it down  
7 into 15 second increments coming in to the -- I  
8 believe it was 15 second increments coming in to the  
9 crash. I don't recall exactly -- well, I -- if you  
10 look at the electronic tachograph, the electronic  
11 tachograph actually breaks it down into intervals  
12 that I utilized in order to be able make  
13 determinations of where the trucks were at what  
14 point in times and so forth.

15 Q. When you say "where the trucks were,"  
16 you mean where the truck and the car were or just  
17 the truck?

18 A. Where the truck was.

19 Q. Did you take into consideration the  
20 actions of the driver of the motor vehicle at any  
21 point?

22 A. I did.

23 MS. RAINES: Objection to form.

24 A. I did. But, more on a rudimentary  
25 level. I didn't get into the break it down into

1     what she was doing. I don't, quite frankly, as  
2     every other expert in this matter, doesn't know if  
3     she had a vehicle to her left-hand side. So, I  
4     couldn't make a determination if she was able to  
5     safely make that left hand -- lane change. So, I  
6     just didn't -- there was no witnesses that came  
7     forward to say that she looked like she was  
8     attempting to make that left-hand lane change. So,  
9     I didn't get into details on that.

10           Q.       Did you read Ms. Hartung's deposition  
11     transcript?

12           A.       I did. It was quite some time ago,  
13     though.

14           Q.       Did you read the section where she  
15     was asked whether there were vehicles to her  
16     left-hand side?

17           A.       Honestly, I don't recall that part.

18           Q.       I am just wondering if -- because you  
19     said that you didn't take that into consideration.  
20     Her testimony was that there weren't any vehicles to  
21     her left-hand side. Is that something that you  
22     would have considered in your report?

23                   MS. RAINES: Object to form. Maybe a  
24     little bit of mischaracterization.

25           A.       Again, I don't -- I don't get

1 involved with the car -- the activities of the car.  
2 I more or less look at it from an FMCSR standpoint,  
3 what the truck did and did not do. So, I did not  
4 break down the car issues, if you will.

5 Q. We are getting into this well ahead  
6 of where I initially planned to in the deposition.  
7 But now that we are talking about it, is it your  
8 testimony that really your analysis was with respect  
9 to what the truck driver did or didn't do and you  
10 really didn't take into consideration what the  
11 driver of the motor vehicle did or did not do when  
12 formulating your opinion?

13 MS. RAINES: Objection to form.

14 A. I think that's pretty well reflected  
15 in my report. I did not get into what Ms. Hartung  
16 did or did not do. My focus was what Mr. Yelverton,  
17 from a commercial motor vehicle operator, did or did  
18 not do.

19 I did, from a lesser standpoint, make  
20 some degree of consideration about Ms. Hartung.  
21 But, not in depth.

22 Q. But that consideration that you just  
23 testified about, is that -- where in your report can  
24 you point to where you made that consideration?

25 A. No. No. In my mind. I'm not saying

1 in the report.

2 Q. So you made that consideration in  
3 your mind. But, you didn't include any  
4 consideration of what Ms. Hartung did or did not do  
5 wrong in your report?

6 A. That's correct.

7 Q. Have you been trained in human  
8 factors at all?

9 A. Human factors, just to the extent  
10 that if they were brought up in training programs.  
11 Were there specific training courses that I took on  
12 human factors? No, sir. I'm not a human factors  
13 expert.

14 Q. You personally couldn't make any sort  
15 of commentary on Mr. Edwards' report then?

16 MS. RAINES: Object to the form.

17 A. Well, there is a -- bringing up Mr.  
18 Edwards' report, I mean, I really couldn't --  
19 there's two issues that I would bring up on Mr.  
20 Edwards' report, one of which is --

21 Q. I'm asking if you could comment on it  
22 or not.

23 A. On the human factors aspects, no.  
24 But, I do have some comments with respect to Mr.  
25 Edwards' report.



1 Q. Have you also had an opportunity to  
2 review Mr. Richter's report?

3 A. I did.

4 Q. I am assuming you also feel that you  
5 have specialized knowledge that would allow you to  
6 comment on that report?

7 A. Yes, sir.

8 Q. Have you had any engineering  
9 training?

10 A. No, sir.

11 Q. Are you a certified accident  
12 reconstructionist?

13 A. I don't belong to ACTAR or anything  
14 like that. No, sir.

15 THE WITNESS: A-C-T-A-R.

16 Q. Do you ever act as an instructor in  
17 any capacity in the field of accident  
18 reconstruction?

19 A. No, sir.

20 Q. Obviously, not in human factors  
21 either?

22 A. No, sir.

23 Q. How about truck -- tractor trailer  
24 inspections?

25 A. I have trained on that. Yes. But,

1 am I a -- is -- am I an active instructor in it?

2 No, sir.

3 Q. Do you hold any state licenses in  
4 accident reconstruction or -- I will quit asking  
5 that.

6 Do you have any state licenses in  
7 tractor trailer inspections?

8 A. There is no -- that I'm aware of,  
9 there is no such thing as a state license. You go  
10 through -- it's MCSAP, M-C-S-A-P, which is -- it's  
11 funding that -- funds for instructors -- excuse me.  
12 Not instructors. But, personnel to investigate  
13 and/or inspect commercial motor vehicles roadside.  
14 That gets in to the FMCSA. So, it's a federal level  
15 rather than a state level.

16 Q. So you are a trained MCSAP  
17 instructor?

18 A. I'm trained in the FMCSA level one.  
19 Yes, sir.

20 Q. Level one.

21 Is that -- a MCSAP inspection, FMCSA  
22 level one inspection, that's -- tell me if I am  
23 mischaracterizing it. That is more or less a  
24 mechanical inspection to make sure that the motor  
25 vehicle -- the tractor trailer is compliant with the

1 Federal Motor Carrier Safety regulations.

2 MS. RAINES: Object to form.

3 A. Yeah. Essentially what it does, it  
4 takes apart 393 and 396 out of the FMCSR and applies  
5 mechanical aspects. But, at the same time, it  
6 teaches you out of service issues. You learn about  
7 out of service. What conditions would make a  
8 commercial motor vehicle considered to be out of  
9 service by the regulations.

10 So, taking all that into  
11 consideration, you're -- you take that information  
12 and do post crash inspections and be able to make  
13 determinations.

14 For example, if it was a truck crash  
15 involved with a braking matter and the truck ran in  
16 to the rear end of another truck and there were skid  
17 marks showing that the driver was awake or, you  
18 know, he did try some evasive maneuvers or what have  
19 you, you can then take that commercial motor vehicle  
20 and check the brakes on it to make sure that the  
21 brakes were in compliance and that 20 percent or  
22 greater of these brakes were not out of service.  
23 Out of spec I should say.

24 Q. You look for things like conspicuity  
25 tape being proper?

1 A. Correct.

2 If it was a rear end on the truck in  
3 front, was there conspicuity markings --tape on the  
4 vehicle, itself? Were the lights working on the  
5 vehicle? Was he on the shoulder? Did he have his  
6 four way flashers on, things of that nature. Did he  
7 have his triangles out?

8 So, it's kind of a combination of a  
9 bunch of different things that bring me to that  
10 conclusion when I'm investigating a crash.

11 So, it's in part, the FMCSA training,  
12 in part of over a thousand crashes in my career, and  
13 in part, the IPTM training in addition to other  
14 training throughout my years.

15 Q. As an FMCSA level one MCSAP  
16 inspector, after a crash happens, your role in that  
17 particular investigation is more or less looking at  
18 the truck in terms of the physical or mechanical  
19 characteristics of what was happening with the truck  
20 at the time of the accident. Is that accurate?

21 MS. RAINES: Object to form.

22 A. Yeah. What was happening with the  
23 truck -- also, looking at reaction times of a driver  
24 -- of a commercial motor vehicle driver and looking  
25 at the 1.5 second reaction time and so forth, you

1 know, looking at evidence such as brake -- skid  
2 marks. Skid marks are going to tell me that the  
3 driver wasn't necessarily on his -- dialing his cell  
4 phone, or looking down at a cup of coffee, or  
5 changing his CD player, or something to that effect,  
6 or even fatigue related matters where the driver  
7 fell asleep behind the wheel. If you see no skid  
8 marks, that's going to tell you that the driver, in  
9 all probability -- especially if you look at the  
10 circadian rhythm. That the driver may have fallen  
11 asleep at the wheel at 3:30 in the morning. So,  
12 it's taking a whole combination of these variables  
13 and, you know, kind of coming up with an opinion.

14 Q. Let's say reaction time that you  
15 mentioned before, that's more from your training at  
16 IPTM in accident reconstruction rather than your  
17 FMCSA level one MCSAP inspector's hat so to speak?

18 A. It is. But, not to say that in the  
19 FMCSA training, that it wasn't covered. Because it  
20 certainly was covered. It was discussed. Was it  
21 discussed to the extent that it was trained in the  
22 IPTM? No.

23 In addition -- I mean, not  
24 necessarily is all of my education on certifications  
25 and on my CV. I spent a lot of time, you know,

1 studying this stuff and reading this stuff, as well,  
2 through the years. So, self-taught I guess you  
3 might say to a large extent, as well.

4 Q. Have you ever given testimony in any  
5 case where you have done a full accident  
6 reconstruction with perception-reaction and done the  
7 mathematical calculations that go along with that?

8 A. When it gets into things like the  
9 mathematical calculations and the crush factors and  
10 so forth, that's not really my area of expertise as  
11 far as reconstruction is concerned. Reaction times  
12 and so forth, yeah. I mean, drag factors, things of  
13 that nature, crash factors I don't get involved  
14 with. But, taking and breaking down the reaction  
15 time, looking at the half second, that lag time for  
16 a commercial motor vehicle air brake system, you  
17 know, incorporating all of that into what occurred  
18 with that commercial motor vehicle before that crash  
19 occurred, yes. I do get involved with that.

20 But do I get involved to the extent  
21 of the mathematical applications that -- no, I  
22 don't.

23 Q. In what cases have you testified  
24 where you have given that kind of analysis?

25 A. Oh. I -- I --

1 Q. If you want, I have a list of cases  
2 where you have given testimony in the past. Maybe  
3 that -- if you look at that, it would help --

4 A. Yeah. It depends on how current that  
5 is, too.

6 Q. We will mark this as Exhibit B. To  
7 the extent that it is not current, I would  
8 appreciate if you could give a current version to  
9 counsel.

10 A. Sure.

11 (Exhibit B, Case list, marked for  
12 identification.)

13 A. Actually, I have some current cases  
14 that I'm, working -- as a matter of fact, one is in  
15 West Virginia right now that I'm dealing with that.  
16 I have some current cases, unfortunately, right now  
17 that I can't disclose. Let me continue looking at  
18 this list and I'll try to give you a more firm  
19 answer as to what --

20 Q. Not to be confrontational, but why  
21 wouldn't you be able to disclose any current cases  
22 that you have given testimony in?

23 A. Without counsel's approval on the  
24 other side, I'm not gonna sit here in deposition and  
25 talk about opinions and --

1 Q. An ongoing matter?

2 A. Right. Exactly.

3 I'm gonna put a checkmark next to the  
4 ones that I think may be involved with what the  
5 subject matter is. Not a hundred percent certain.  
6 Just going back on my recollection.

7 Q. Okay.

8 A. Or I'll maybe highlight it.  
9 Highlight or check? What would you like?

10 Q. Highlight works just fine.

11 A. And again, this is going back on  
12 recollection. I'm not a hundred percent certain,  
13 though. I'll send you off on a wild goose chase  
14 now.

15 Well, here's one here, this Arkady  
16 Frekhtman, F-r-e-k-h-t-m-a-n. There was never a  
17 report generated and it was never actually filed in  
18 the suit because I walked away based on the  
19 findings. I explained to the attorney that you  
20 don't have a case or it's a nonstarter. So, never  
21 filed a case. He walked away from it, as well.

22 Q. What was the name?

23 A. Sure. Arkady Frekhtman. That's the  
24 attorney. F-r-e-k-h-t-m-a-n. There was nothing  
25 in-depth. But, I did some analysis on it, to make a



1 determination what happened, what the driver did and  
2 so forth. It was a crash and burn on a CMV.

3 Here's one down in Texas. Terry  
4 McCartney. It was a crash and burn, as well.  
5 Again, there was some degree of -- some degree of  
6 reconstruction that was applied on these, as well.

7 Q. Just so I am clear, you don't do  
8 reconstructions in cases involving motor vehicles.  
9 You only do them when there is a commercial motor  
10 vehicle involved.

11 A. Right. That's correct.

12 Chris Karounos, there was some  
13 reconstruction that was done on that one. That's  
14 K-a-r-o-u-n-o-s. Again, I highlighted that one, as  
15 well.

16 Q. I want to follow up on that while we  
17 are still on the topic.

18 Is there a particular reason why you  
19 don't get involved doing reconstructions in cases  
20 involving motor vehicles? Is it because you haven't  
21 been trained in that --

22 A. No. It's just something that I  
23 prefer not to do. If I'm not real good at  
24 something, I don't do it. I consider myself to be  
25 really good at commercial motor vehicle crashes, and

1 investigating the truck, and investigating the  
2 circumstances around the crash, why it happened and  
3 so forth. But, I don't get involved with the  
4 aspects that necessarily are something that I -- if  
5 I don't feel that I'm 110 percent on it, right, if  
6 I'm 99.9 percent on it, I'm not going to do it. I  
7 get asked to do cases quite often in truck related  
8 work that I just won't do because I just don't -- I  
9 don't want to spend my time dealing with something  
10 like that.

11 Q. But you -- my question is then, you  
12 do know how to apply perception-reaction time to a  
13 motor vehicle crash such as this one?

14 A. I do.

15 Q. Is there any reason why you didn't do  
16 that in your analysis in this matter?

17 A. Again, I was -- my focus was on the  
18 commercial motor vehicle. You know. All my  
19 information shows I'm a commercial motor vehicle  
20 expert. So, I'm looking at more from a regulatory  
21 standpoint, what the truck did or did not do. And  
22 now if I felt that Ms. Hartung was -- was the lead  
23 cause on the crash, then I certainly would have  
24 added it into there. I would have at least put some  
25 kind of footnote in there, if you will. But, you

1 know, I didn't feel as though she was. My focus was  
2 on the truck and Mr. Yelverton's actions.

3 Q. I understand that. But, there were  
4 two vehicles involved in the crash.

5 A. I understand.

6 Q. Ms. Hartung rear-ended Mr.  
7 Yelverton's vehicle. Is that not how this crash  
8 happened?

9 A. Mr. --

10 Q. Answer my question.

11 A. Well, I deserve the right to go --  
12 other than just a yes or no.

13 MS. RAINES: Objection.

14 Q. Did Ms. Hartung's vehicle strike the  
15 rear of Mr. Yelverton's tractor trailer?

16 A. Well, of course she did.

17 Q. But you didn't take any consideration  
18 -- you didn't take into consideration whether she  
19 could have avoided the accident by looking ahead?

20 A. I'm not saying that there may have  
21 been opportunity for her to cut left to get around  
22 that crash. All right? I don't know that for a  
23 fact. I was not in the vehicle. I don't know her  
24 actual speed. You know. I know she testified I  
25 believe to 65 miles per hour. So, I -- I just

1 didn't opine on that. I based my information on  
2 facts that I have and the facts that I have is she  
3 slammed into essentially a parked -- for all intents  
4 and purposes, a parked tractor trailer on the  
5 interstate highway. You know? And there were no --  
6 there was no attempt to get to the shoulder. There  
7 was -- you know, as far as four-ways are concerned,  
8 four-way hazard lights, I don't believe that Mr.  
9 Yelverton put the four-ways on. You know.

10 As far as his distraction that he had  
11 on his cell phone --

12 Q. We read your report. We'll talk  
13 about the report.

14 A. Right. Okay.

15 Let me keep going through these  
16 here -- these list of past cases here.

17 I believe I did on this one, Paul  
18 Zerola too. I did or I'm -- I'm putting a question  
19 mark next to that one.

20 I also put a question mark next to  
21 Karounos and Laskin.

22 And again, you'll notice under  
23 Frekhtman, that the case was never filed. I just --  
24 I did that in an attempt to understand exactly what  
25 had occurred on that crash.

1 Q. What happened on that crash that you  
2 were talking about that you walked away from?

3 A. Oh. I probably turned down --  
4 there's -- that's just an example. I probably  
5 turned down 25 percent of work that calls in to my  
6 office that I just don't -- 'cause I just don't feel  
7 like dealing with it. It's a case that I don't want  
8 to deal with. I get called on railroad incidents  
9 just choose not to do it. I'm very well experienced  
10 in railroad crashes. I've handled some of the most  
11 notorious crashes in current history around the  
12 country. Handled from a management standpoint  
13 on-site. You know. I can do jet crashes. But, do  
14 I choose to do jet crashes? It would have to depend  
15 on the circumstances of the crash, itself.

16 Q. Do you ever choose not to handle a  
17 case because someone's come to you and said hey,  
18 give me your opinion on this and say they represent  
19 a particular party and you say, I can't find fault  
20 with the other party?

21 A. Oh. Absolutely. Matter-of-fact,  
22 that was the one that I gave you earlier, is Arkady  
23 Frekhtman. I refused to handle that case because of  
24 the simple fact that it was a case that I just felt  
25 that it was a loser. I only sign on to the side

1 that I think is right.

2 Q. Has an attorney ever come to you in a  
3 rear-end collision and you said that I can't handle  
4 this case because I can't find fault with the --  
5 with your driver?

6 A. Repeat that again, please?

7 Q. Has an attorney ever come to you in a  
8 rear-end accident where you have turned down the  
9 case because you couldn't find fault with the other  
10 party?

11 A. I really don't -- I don't recall, to  
12 be honest with you. I mean, I don't make notes in  
13 the cases that I turn down. I mean, you know, if  
14 I'm handling 40 cases a year, that means I'm turning  
15 down 10 to 12, maybe 15 -- well, more than that.  
16 Yeah. 10 to 12 cases a year. So, I don't remember  
17 back -- you know, in recollection looking back three  
18 years ago that I had a conversation with, you know,  
19 a specific attorney and, you know, he wanted me to  
20 handle a rear-end crash. I just don't -- I don't  
21 recall.

22 Let me finish on this real quick here  
23 so I can get my thoughts out.

24 Q. Sure. I am making you multitask  
25 right now.

1           A.           I know where that's going.

2                       I think that might be about it.

3       There may be some others in here. Again, it's just  
4       not coming to my recollection.

5                       There -- yeah. That's about it. I  
6       highlighted them and I put some question marks next  
7       to the ones that may or may not have been. But,  
8       there was, I believe, perception and reaction issues  
9       in those particular highlighted cases.

10          Q.           Let me ask you this.

11                       As far as this list is concerned,  
12       have you ever -- are any of these cases rear-end  
13       accidents where you found fault with the striking  
14       vehicle? Have you ever given testimony or written a  
15       report in a case like that?

16          A.           I don't -- I just don't recall. I  
17       mean, I don't, offhand, recall. I mean, I certainly  
18       could get back to you on that. But, I just don't  
19       recall. Not back to you. But, back to Ms. Raines.

20          Q.           Let me look through some of these  
21       brief case descriptions here. Not that I am saying  
22       you are being evasive or anything like that. It  
23       might refresh your memory. I remember looking  
24       through here, I saw some. For instance, "Rizzuto  
25       versus Coastal. Car driver rear-ended into 306."

1 It's 2/28/12.

2 A. Can I see that one?

3 Q. Sure.

4 A. Okay. Yeah. This matter here may  
5 still be open. I haven't heard anything from the --  
6 actually, I believe it's still open. It was a car  
7 that ran into a truck on the roadside. It was --  
8 there was ice on the road. It was coming down a  
9 hill. And the driver panicked on the hill because  
10 there was ice -- there was snow -- it was a slippery  
11 condition.

12 Q. Which driver?

13 A. The truck driver. He panicked on the  
14 road and he stopped his truck in the middle of the  
15 road.

16 And I was on the plaintiff's side,  
17 the side with the car that came up and rear-ended.

18 Now, I do not -- no. There was a  
19 report on that one actually. Again, that's Soltis.  
20 S-o-l-t-i-s. I don't know if there was  
21 perception-reaction put into there. But, that was a  
22 rear-end on a -- it was an MC 306 gasoline cargo  
23 tank truck in Upstate, New York.

24 Q. "PAK-AM Transit, Inc. and Akinwole  
25 Foster. Car into tractor trailer on I-87." Do you



1 remember the details of that accident?

2 A. Can you show me that one, please?

3 Q. Yes. That is Michelle Laskin, the  
4 attorney.

5 A. Yeah. That's why I highlighted that  
6 one.

7 Yeah. If I remember correctly, this  
8 was a -- again, it was a snowy condition. The  
9 driver should have taken his vehicle off the  
10 roadway. And I believe he -- he jackknifed going  
11 down a mountain. I believe he applied his Jake  
12 brake, which is a no-no with commercial motor  
13 vehicles on icy roads or wet conditions. And I  
14 believe that the car came in to the side of his  
15 commercial motor vehicle.

16 And I was also plaintiff on that  
17 case, too.

18 Q. How about "Nancy Nolan Rosado, et al.  
19 Four time fatal New Jersey Turnpike"? You testified  
20 for the defense in that matter. Do you remember how  
21 that accident occurred?

22 A. Yeah. My opinions on that matter  
23 were strictly with respect to the load securement,  
24 part 393.100. Under the FMCSR. And dealing with  
25 load securement of the truck. The truck had rolled

1 over and the freight came off the truck and there  
2 was five people killed on that one. So, I -- that  
3 was a -- that was a -- that was more of a load  
4 securement matter than anything else.

5 Q. "Tractor trailer wheels off truck,  
6 struck car." Those are always interesting.

7 A. Oh. They're fun. Nine times out of  
8 ten, the same things over and over again.

9 I'm not gonna say what it is because  
10 that will come up in a later point.

11 Q. How about this 12/6/2012? "Crizaldo,  
12 plaintiff Larry Wilson. Burdick versus Lambland."  
13 It says you testified for the defense in that case.  
14 Do you remember the details of that accident?

15 A. You know, that one is completely  
16 drawing a blank.

17 Q. "Teeter, Michael" --

18 A. Oh. Crizaldo. I'm sorry.

19 That one there is drawing a complete  
20 blank. I don't -- I just don't -- honestly do not  
21 remember what that was. I don't recall.

22 My guess is that it probably may not  
23 have gone forward because I just don't remember  
24 authoring a report on this. A report, I would like  
25 -- very likely remember. And I just do not recall

1 authoring a report. Oh. You know what? That's  
2 right. I didn't. I want to say that this was in  
3 Arizona. I'm not a hundred percent certain. But, I  
4 -- this one here, it was what I call a nonstarter.  
5 Nonstarter meaning, you know, I'm not gonna work  
6 this matter because I can't help you.

7 Q. What were the details of that crash?

8 A. I just -- it --

9 Q. Was it a rear-end accident?

10 A. I don't believe so. I -- I just  
11 don't recall. I just don't -- I really just don't  
12 recall.

13 Q. I am going to mark that one with a  
14 star just for my edification.

15 A. Sure.

16 Q. How about this November 22, 2012 case  
17 for "Roger Turk, Rodriguez versus Coca-Cola"? It  
18 says "Coca-Cola into car at intersection."

19 A. Yeah. He was -- if I remember  
20 correctly, the truck was making a left-hand turn.  
21 He was -- I believe the truck was -- the truck was  
22 making a left-hand turn and the car had -- I believe  
23 the car collided in to it. I just don't remember  
24 the details on it, though. I try to keep all my  
25 memory bank space that's available for current cases

1 and get rid of the junk.

2 Q. What I am really trying to get at  
3 here -- it's relevant.

4 A. I understand.

5 Q. -- if you've handled a case where you  
6 have given an opinion for a plaintiff that was rear-  
7 ended.

8 A. Sure.

9 Q. Because obviously, that's very  
10 similar to the case we have here.

11 A. Sure.

12 Q. I am thinking that there is a good  
13 likelihood that at some point in time, you may have.  
14 I am just trying to go through what I have in front  
15 of me just to potentially explore all of --

16 A. I completely understand.

17 Q. -- the potential cases that at least  
18 I know about.

19 How about 1/31/2013? Robert Mixson  
20 was the attorney. You have "Tractor crash defense."  
21 Do you remember the details of that case?

22 A. Yeah. It was a tractor trailer -- it  
23 was a tractor trailer involved with a car or a  
24 U-Haul if I remember correctly. You know. It was a  
25 tractor trailer involved with a U-Haul. The details

1 on it, I never -- I don't recall the specific  
2 breakdown of that case, though.

3 Q. How about the next one here,  
4 "4/15/2013, Mark L. Levinson"? You have "Carrington  
5 versus Truck-Rite." That is a "Truck versus bus."  
6 You testified for the defense in that case. Do you  
7 remember the details of that accident?

8 A. No. Unfortunately, I don't.

9 Q. Looking at this list of cases in  
10 which you have listed for us as far as your  
11 testimony or issued a report, you do testify for the  
12 defense sometimes. Would it be safe to say that the  
13 majority of your work is plaintiffs' oriented?

14 MS. RAINES: Object to the form.

15 A. No. Actually, it used to be. As  
16 you're looking at the -- my list there. It used to  
17 be predominantly plaintiff. I would say about a  
18 65/35 mix, if you will. The weight being to the  
19 plaintiffs' side. But, over the last -- the last  
20 year, I have been getting a plethora of calls from  
21 defense attorneys and reason being is a lot of it is  
22 repeat work.

23 Q. Okay.

24 How about this 4/28/2013? You  
25 testified for Kevin Connolly in the matter of

1 Hussain versus Five Star Carting. "Car versus  
2 garbage truck" is what you have as the description.  
3 You testified for the defense there. Do you  
4 remember the details of that accident?

5 A. If I remember correctly, that was a  
6 truck in a scrap facility and -- if I remember that  
7 one correctly. And I don't believe a report was  
8 rendered on that case. There was -- there was  
9 something to do with a scrap facility. Again, if  
10 I'm recollecting correct. A scrap facility that --  
11 there was an accident or something to that effect.  
12 I don't remember the details, though.

13 Q. We are almost through this list. We  
14 will be moving on.

15 A. Okay.

16 Q. I don't mean to belabor the point.

17 A. No. It's quite all right.

18 Q. How about "Craig Prosmushkin, Candice  
19 Rienzo, Hazan Ayaz versus Roma Granite"? Do you  
20 remember the details of that case?

21 A. Oh. You know what that was? Yeah.  
22 This was -- yeah. This was a load securement issue.  
23 Yeah. That was load securement. I'm pretty sure it  
24 was load securement.

25 Q. I wanted to talk about the next one

1 then, which would've been the "Carrasco versus  
2 Reliable Wood." Do you know the details of that  
3 case?

4 A. Can I see it?

5 Q. It is the next one there.

6 A. My -- oh. You know what? Okay. No.  
7 This was a pedestrian crossing the roadway and he  
8 got run over by a truck. It was a fatal. And as  
9 far as -- I don't believe that I rendered a report  
10 on this. And the reason is that I told the  
11 attorneys that there -- they better sharpen their  
12 pencil. Defense. Yeah. I'm 99.9 percent certain I  
13 did not render a report on that one.

14 That would be one of those examples  
15 that -- you know, where I reviewed the documents and  
16 got back to counsel and -- for -- what happens  
17 sometimes is, I'll get a phone call on a case. The  
18 attorney tells me about it over the phone and I say  
19 I'm sorry. I can't help you. In this particular  
20 case here, you know, maybe everything was not --  
21 they were not a hundred percent forthright of what  
22 had happened. I looked at the documents on this and  
23 I got back to them and said I cannot render an  
24 opinion on this for you. I can't help you.

25 Q. Did you, at any point, do a

1 perception-reaction analysis in the Carrasco case?

2 A. Is that the one we were just talking  
3 about?

4 Q. That was the one. I believe so.

5 A. Yeah. I believe it was. Yeah. It  
6 was a Peruvian woman.

7 It would have been just from a -- the  
8 standpoint of a blind turn. So, is it -- I just  
9 don't recall if I broke it down. I know that I  
10 didn't put it down on the record. So, anything that  
11 might exist from that is gone. So, I just don't --  
12 you know. Nothing would've been written.

13 Q. I am just trying to get a general  
14 sense. Was that a case where you didn't render an  
15 opinion because the driver of the motor vehicle  
16 failed to perceive and react to stimulus or a  
17 situation in front of them and failed to stop in  
18 time?

19 A. It would've been that in combination  
20 with the blind turn. So, all of these things  
21 combined together to try to come up with that  
22 opinion. So, yeah. I would have, to a rudimentary  
23 level. I would not have gotten into, you know,  
24 extreme depth with it. But, there was too many  
25 factors that were against the trucking company on



1 this and it was not worth the fight.

2 Q. When you say that in combination with  
3 a blind turn, you mean the failure to perceive and  
4 react in combination with the fact that the truck  
5 driver was making a blind turn made him more liable?

6 A. No. It was at nighttime. Woman was  
7 wearing a dark clothing. There was a lot of  
8 variables involved with it. But, at the same time,  
9 you know, I just felt, in my opinion, at that point,  
10 there was enough lighting -- artificial lighting in  
11 the area. It was well lit up. There was a gas  
12 station right there at the corner. There was street  
13 lights. And she came out from behind a sign,  
14 started crossing the highway, and the truck driver  
15 made a right-hand turn on to the roadway from a stop  
16 -- a full stop -- presumably full stop. There was  
17 no ECM data downloaded. So, I don't -- I can't say  
18 for certain. I'm just going on testimony. So, you  
19 know, I utilized whatever information that I had to  
20 come up with an opinion that I couldn't defend that  
21 case for them.

22 And I believe it was shortly  
23 thereafter that they settled the case, too, based on  
24 my -- my preliminary findings.

25 Q. How about this "Andrew Christman,

1 Clinton and Stephanie Montgomery versus E&M Oil  
2 Company, Inc."? You testified for the defense.  
3 There's no description.

4 A. Yeah. That was a tanker explosion.  
5 That's down in Oklahoma. I'm actually involved in  
6 that one right now.

7 Q. The next one, attorney "Matt Rosek,  
8 Billy E. Williams, Junior and C&W Fuels."

9 A. Right.

10 Q. You testified for the defense in that  
11 matter?

12 A. That was a fire in the loading rack.  
13 A driver got severely burned.

14 Q. The last one is 10/18/2013. You  
15 testified for a "David A. Yavil. Matyi versus  
16 Transport Intermodal, Balit Singh, et al." Do you  
17 remember the details of that case?

18 A. Yes, sir. Now we're getting to more  
19 current days. So, I can remember these things.  
20 Three years ago, I'm kind of lost.

21 Yeah. That one there was a  
22 suspension related matter, where -- a Posi-Lock,  
23 P-o-s-i hypen L-o-c-k. An alleged failure of the  
24 Posi-Lock of the truck. So, it had -- there was no  
25 crash related issues here.

1           Q.           If you could -- if you have an  
2   updated version of case testimony, we would  
3   appreciate that.

4                       Having gone through that document, I  
5   think it's probably a good time to stop real quickly  
6   if that is okay with everybody.

7                       (Recess.)

8           Q.           Mr. Turner, have you published any  
9   articles on tractor trailer inspections or accident  
10  reconstruction in your career?

11          A.          There's been some. But, there --  
12  they're more blogs, if you will. You know. There's  
13  not a dealing with -- not necessarily in-depth  
14  reconstruction. But, dealing with brake  
15  applications and so forth of commercial motor  
16  vehicles and things of that nature. Transportation  
17  cargo tank trucks, bus crashes, you know, motor  
18  coach crashes and things to that effect. Nothing  
19  from -- I've done some from magazines, too. But,  
20  they're not -- they're more dealing with the  
21  regulations, themselves, rather than reconstruction.

22          Q.          What magazines have you been  
23  published in?

24          A.          Over the years? Bulk Transport. I  
25  think it's called Bulk Transport or Bulk Carrier.

1 Many years ago. That was dealing with cargo tank  
2 truck crashes. That was probably I'm gonna say 15,  
3 maybe 18 years ago.

4 I just recently did an article  
5 dealing with bus crashes. It's an electronic  
6 magazine, if you will. I can't remember what the  
7 name -- it's called Bus something or other. Bus  
8 Industry Magazine or something to that effect.

9 Q. What was the nature of that --

10 A. It was about bus crashes and it was  
11 not perception-reaction. It was with regulatory  
12 issues.

13 Q. You said something about blogs? Do  
14 you have a blog?

15 A. Yeah. But, the blog -- it doesn't  
16 get involved with accident reconstruction.

17 Q. What is the name of the blog?

18 A. truckcrashblotter.com.

19 Q. You just got a new reader.

20 A. I kind of figured that. There's  
21 nothing there really.

22 Q. Can you identify specifically what  
23 scientific literature treatises that you depended on  
24 when formulating your opinions that you have  
25 rendered in this matter?

1 MS. RAINES: Object to the form.

2 A. Essentially, I mean, I -- the Federal  
3 Motor Carrier Safety regulations, the Motor Fleet  
4 Safety Supervisors of NATMI. They're listed on my  
5 report. On the back of my report here. Whatever  
6 else I utilized.

7 Q. We will go through that line by line  
8 in a minute.

9 A. Okay.

10 MR. MONTGOMERY: I am going to go  
11 ahead and mark, as Exhibit C, a copy of Mr. Turner's  
12 report that he has authored in the matter.

13 (Exhibit C, 3/25/14 expert report,  
14 marked for identification.)

15 I will note, for purposes of the  
16 record, that this report does not have the CV  
17 attached, which was I think the form I got it in.  
18 For the purposes of deposition today --

19 Q. I will have you look at it and state  
20 that this is a full, complete, and accurate version  
21 of the report that you authored in this matter.

22 A. Yeah. And there is one thing that I  
23 -- when you asked me about Ms. Hartung. It just  
24 jogged my memory.

25 About my opinions as to her actions.

1 I just -- I did put something in the report and I  
2 just -- at the time we were talking about it, I  
3 didn't recall.

4 Q. What was that?

5 A. It was essentially talking about her  
6 -- the short time span that she had the ability to  
7 react to essentially a parked 80,000 pound or there  
8 -- close to 80,000 pound commercial motor vehicle on  
9 an interstate highway. So, that really was an  
10 opinion. But, it wasn't a breaking down of the acts  
11 from an accident reconstruction standpoint. So, I  
12 did offer an opinion. But, it was not necessarily a  
13 breakdown of, you know, timeliness and so forth.

14 Q. If you could point to me, in that  
15 report, where you did do that, that would be  
16 helpful. I don't remember any commentary,  
17 whatsoever, on her driving actions or inactions.

18 A. Sure. Yeah. I'm almost positive I  
19 did. Let me verify that this is an original here  
20 first and then I will go ahead and go over my copy  
21 and find that for you.

22 Yeah. This appears to be a copy of  
23 my original.

24 Q. And you have a copy of it right in  
25 front of you. It is the same as my copy. Correct?

1 A. Yes, sir.

2 Q. Just while we are on the topic. If  
3 you could, please, point to me in the report where  
4 you have done some analysis with regard to Ms.  
5 Hartung's inactions or actions.

6 A. Again, it was not a, you know,  
7 scientific analysis. It was just a -- it was a  
8 statement that I had. And this is just a  
9 recollection. I don't remember specifically where  
10 it is. But, give me a minute and I'll find it for  
11 you.

12 Q. Just so I am clear, your testimony  
13 before was that you didn't consider Ms. Hartung's  
14 actions when you formulated your opinion. Now are  
15 you changing that --

16 A. No. No. No. I -- I made a -- what  
17 I'm saying is that it is my opinion that Ms.  
18 Hartung -- in the closing speech, she would've  
19 recognized the vehicle somewhere around 500 feet or  
20 400 feet, somewhere in that area. Did that give her  
21 enough time to react in an evasive manner? I don't  
22 know for certain. But, I know that it was -- it was  
23 -- she did make an attempt to get around the  
24 commercial motor vehicle or the tanker. The tank  
25 truck.

1 Q. But you have been trained in  
2 perception-reaction time. Correct?

3 A. Yes.

4 Q. Why wouldn't you have applied  
5 perception-reaction time to this accident?

6 A. Again, my main focus was dealing with  
7 the commercial motor vehicle.

8 Q. But you have made the conclusion that  
9 the sole contributing factor of the crash was the  
10 actions of Reginald Yelverton. Is that accurate?

11 A. We'd have to go through my opinions.

12 Q. I am not trying to be difficult, but  
13 you gave them.

14 A. I understand. But I want to reflect  
15 on my opinions that I wrote -- you know. I wrote  
16 these opinions back on March of 2014. So, I just  
17 want to make sure that I have the language correct.  
18 I think that's pretty important.

19 Q. I think so, too.

20 Did you review your report before you  
21 testified today?

22 A. I did. I reviewed it last night,  
23 amongst some other documents I've got here. You can  
24 see I've got literally a couple thousand pages here  
25 that I've reviewed. I took a look at not everything



1 last night, but things that I felt were of  
2 importance today.

3 But, if you will give me a minute, I  
4 will review this real quick.

5 Q. Sure.

6 A. And by the way, the instructor that  
7 was from IPTM, I believe the one guy's last name  
8 began with an H. Hol something or other. H-o-l  
9 something or other, if I'm not mistaken. Again, I  
10 don't recall Rickard. I'm not a hundred percent  
11 certain, though. But, the main instructor was the  
12 same guy who wrote the book, itself. You know.  
13 But, then again, you know, you go to training  
14 courses, I can't tell you how many times I've had  
15 instructors from other training courses in my --  
16 sitting as students in courses that I've taught,  
17 too, for the State Police. So --

18 You know, I can't locate it right  
19 now. But, during a break, I could take a look at it  
20 for the benefit of time. But, I'm almost positive  
21 that I said something to the effect of timeliness  
22 with Ms. Hartung. I'd have to double check on that.

23 Q. I think it's real important -- I  
24 prefer if you take the time right now. I have read  
25 the report. I am going to relate to you that there

1 is no such commentary in the report.

2 A. Okay.

3 MS. RAINES: If I may, can we look at  
4 opinion number one?

5 MR. MONTGOMERY: Sure.

6 A. Yeah. I -- it -- where she has a  
7 reasonable expectation to be able to travel down  
8 Interstate 77 and not have to be faced with a  
9 commercial motor vehicle essentially parked. I  
10 mean, that's not exactly what it says. But, the  
11 interpretation of it.

12 Q. Right. But there is no perception-  
13 reaction analysis?

14 A. No. No. Well, I prefaced this whole  
15 conversation with saying that there's no perception-  
16 reaction time analysis. But, there is a point where  
17 I put -- it did put into the report that, you know,  
18 she has that expectation to be able to drive safely  
19 down the highway and not have a parked commercial  
20 motor vehicle sitting on the -- in the right-hand  
21 lane.

22 Q. But in that analysis, you don't talk  
23 about her obligations or duties as a driver of a  
24 private motor vehicle --

25 A. No.

1 Q. -- at all. Correct?

2 A. No. That's correct.

3 Q. So basically, there's no  
4 consideration of the inaction or actions of Ms.  
5 Hartung as it relates to your opinions that have  
6 been rendered in this accident?

7 MS. RAINES: Objection to form.

8 A. Repeat that again, please?

9 Q. Essentially, there has been no  
10 consideration of the actions or inactions of Ms.  
11 Hartung as they contributed to this crash with  
12 respect to the opinions that you formulated in this  
13 case?

14 MS. RAINES: Object to the form.

15 A. I didn't take a -- an extensive look  
16 at what she had done in -- as to involvement with  
17 the crash.

18 Q. I think now I am going to go ahead  
19 and go through the stuff that you have laid out here  
20 on the table as being the contents of your file. I  
21 will identify, for the record, the documents. If  
22 you could copy them and send them along to us, I  
23 would appreciate it.

24 A. Sure.

25 Q. What I have here is the "Kenan

1 Transport Company driver accident report form." Did  
2 you review and analyze this in the formulation of  
3 your opinions rendered in this matter?

4 A. Yes.

5 If there's anything that has either  
6 tabs on it or highlights in it would indicate that I  
7 reviewed it.

8 The only things that I typically  
9 don't review, typically, is going to be medical  
10 related and/or insurance related. Sometimes I do,  
11 sometimes I don't. But, on a typical basis, I don't  
12 get involved with those two aspects.

13 So, anything else you see here on the  
14 table with exception to -- I don't believe there's  
15 any medical here. There is some insurance here that  
16 I did not review. But, with respect to everything  
17 else, it's all been reviewed. So, it would be a  
18 combination of these things that helped me to  
19 formulate my opinions.

20 Q. I have here the "State of West  
21 Virginia uniform traffic crash report." Did you  
22 review and analyze this in the formulations of your  
23 opinions rendered in this matter?

24 A. I did.

25 Q. While we are on the topic, did you

1 note in this report where Ms. Hartung was issued  
2 with a citation for failure to remain in control of  
3 her vehicle in violation of 17C-6-1 of the West  
4 Virginia code?

5 A. I believe that I did. I believe I  
6 did put that in my report. Yes. And --

7 Q. Well, that is not in your report.

8 A. I thought that I had mentioned it in  
9 my report.

10 Q. If you could show me, in your report,  
11 where you mentioned that Ms. Hartung was cited as a  
12 result of this accident, I would appreciate that.

13 A. Okay. What I had said in here was  
14 about the -- with the West Virginia State Police  
15 report was about the fact that it was not a hazmat.  
16 All right?

17 Q. Is the police report something you  
18 typically consider in the formulations of your  
19 opinions --

20 A. Yes.

21 Q. -- when asked to do so?

22 And you did consider this State  
23 Police report. Correct?

24 A. Yes, I did.

25 Q. But you didn't mention that Ms.

1 Hartung was issued a citation for failure to remain  
2 in control anywhere in your report?

3 A. You know. I --

4 Q. Yes or no?

5 A. Well, it's not a yes or no answer.

6 Q. Well, I am asking if it's in your  
7 report or not.

8 MS. RAINES: Let me object. Please  
9 let him finish his answer to your request.

10 MR. MONTGOMERY: It was a yes or no  
11 question.

12 Q. I am not trying to be difficult. Did  
13 you mention in your report that Ms. Hartung was  
14 cited for failure to remain in control? Yes or no?

15 A. Again, there's no such thing as a yes  
16 or no answer. When I give depositions, I prefer to  
17 make sure that I have yes, with explanation or no,  
18 with explanation.

19 Q. Then answer no and explain.

20 A. Okay.

21 No, it was not written in here.

22 And the -- but, when I do deal with  
23 situations like this often -- and I should have --  
24 matter-of-fact, I would probably supplement the  
25 report based on my past experience. Normally, what

1 I do is, I look into whether the West -- in this  
2 case here, West Virginia State Trooper was actually  
3 an FMCSA trained individual. Because often, they're  
4 just standard troopers, if you will. No insult to  
5 them. They're standard troopers that are not FMCSA  
6 trained. They have no accident reconstruction  
7 training to an extent of a commercial motor vehicle.  
8 So, they often will not address issues that are in  
9 the FMCSR when they write the citation.

10 So, does that trooper necessarily  
11 know that the vehicle has certain requirements under  
12 part 383.111 under the FMCSR, which is required  
13 knowledge of the driver? You know. Does the  
14 trooper necessarily know that under 390.3, general  
15 requirements, that the driver has to understand the  
16 Federal Motor Carrier Safety regulations, therefore  
17 a CDL is not just enough to drive a truck?

18 So, that I would amend or I would  
19 supplement my report based on that. Because it's  
20 something that I feel that should've been put in to  
21 the report but for whatever reason, it was  
22 overlooked.

23 Q. It should have been put in your  
24 report --

25 A. Yes.

1 Q. -- that Ms. Hartung was cited?

2 A. It should have been put in my report  
3 that Ms. Hartung was cited and that Ms. Hartung or  
4 the trooper that cited her cited her with the basis  
5 of not understanding the obligations of a commercial  
6 motor vehicle operator.

7 Q. Okay.

8 And you said that this is an ordinary  
9 statement --

10 A. Let me just make a note real quick on  
11 supplementing that.

12 Q. You said this is not a -- this is  
13 just an ordinary State Trooper. Do you know the  
14 State Troopers that investigated this accident?

15 A. Again, that's what I said. I would  
16 look into that. For some reason, that escaped my --

17 Q. I thought your statement was that  
18 they were not FMCSR trained?

19 A. No. I said they're often not.  
20 There's a lot of troopers that I know that are MCSAP  
21 trained. There's -- the majority of them are not  
22 MCSAP trained. The large majority of them. So, I  
23 would look into that to find out if this trooper, in  
24 fact, was or was not MCSAP trained and if he was,  
25 then he would have -- it would be a little bit more



1 believable to me that -- you know, the violation  
2 that he wrote up. Because if he's not a MCSAP  
3 trained officer, he cannot write federal violations.  
4 He cannot write violations out of the FMCSR. He can  
5 only write state violations under West Virginia.

6 Q. But we are talking about Ms.  
7 Hartung's ticket, which isn't a federal violation?

8 A. Right.

9 But, here the issue is that -- what  
10 your issue is that Ms. Hartung was the only one to  
11 receive a violation.

12 Q. That's not what my question was. I  
13 asked if she was cited or not.

14 A. But, that's where you are going with  
15 this.

16 Q. I don't know that you know where I'm  
17 going with anything, to be quite frank with you.

18 I'm asking you whether or not Ms.  
19 Hartung was cited and whether it's mentioned in your  
20 report. I apologize I gave you the platform to  
21 discuss the federal regulations and things of that  
22 nature, which in my opinion, is not responsive to my  
23 questions.

24 My question was simple. What was she  
25 cited, did you consider it, and did you put it in

1 your report?

2 MS. RAINES: Objection. Asked and  
3 answered, argumentative, as well. I believe we have  
4 covered that.

5 Q. You mentioned before if officers are  
6 MCSAP trained, that that would provide more weight  
7 in your opinion to the conclusions reached in that  
8 report?

9 A. It would provide a little bit more  
10 weight. Sure. I mean, I would look at that and say  
11 okay, he gave her a violation.

12 If he is an enforcement officer under  
13 MCSAP, then did he -- he would be able to write  
14 violations under Title 49.

15 Q. So if one of the officers that  
16 investigated this crash is an enforcement officer or  
17 a MCSAP officer, then you would take more -- there  
18 would be more credence to the fact that Ms. Hartung  
19 was cited?

20 MS. RAINES: Object to the form as  
21 hypothetical and also to the relevancy considering  
22 that the citation was dismissed.

23 You can answer.

24 MR. MONTGOMERY: Thanks for the  
25 speaking objection.

1 Q. Go ahead.

2 A. Again, repeat the question, please.

3 Q. If there was an FMCSA inspector or a  
4 MCSAP inspector that was involved in this  
5 investigation, you would give more weight to the  
6 fact that Ms. Hartung was cited?

7 MS. RAINES: Same objection.

8 A. Well, if the violation stood, you  
9 know, then I would look at it and say there may be a  
10 little more weight. However, it still doesn't  
11 change my opinions of what Mr. Yelverton did or did  
12 not do to cause this crash.

13 MR. MONTGOMERY: Counsel, I am going  
14 to ask that you keep your objections to form.

15 MS. RAINES: Because that is an  
16 admissibility issue, it had to be rendered.

17 Q. This is the training hazardous  
18 materials HM-126 and security HM-232. This is a  
19 Kenan Advantage Group, Inc. document. Did you  
20 review these documents --

21 A. I did.

22 Q. I believe actually appended to this  
23 is Mr. Yelverton's driver's qualification file. Did  
24 you review his driver's qualification file in  
25 rendering your opinions in this matter?

1 A. I did.

2 Q. Do you remember when Mr. Yelverton's  
3 driver's qualification file dates back to as far as  
4 his driving history?

5 A. No. I don't specifically recall his  
6 driving history, as far as how long he's been  
7 driving a commercial motor vehicle. I just don't  
8 recall.

9 Q. You make mention of it in your  
10 report. I believe that you state that it goes back  
11 to 2005. Does that refresh your memory?

12 A. Yeah. That's what I'm reviewing  
13 right now.

14 Well, he began his driving stint with  
15 ATL/KTC March of 2010.

16 Q. When did he begin his driving career?  
17 Under "5.1, Driver's qualification," you note "His  
18 employment application filed with ATL/KTC dated back  
19 to November 2005, whereas most of his driving career  
20 was operating CMVs with semivan trailers." That is  
21 the first paragraph under 5.1.

22 A. Right. All right. I got you. Yep.

23 Q. So you reviewed Mr. Yelverton's  
24 driver's qualifications?

25 A. That the's -- I didn't have my

1 glasses on. I'm sitting here squinting at it. I'm  
2 not -- I see it now very clearly.

3 All right. Go ahead.

4 Q. Did you review -- the question was,  
5 did you review Mr. Yelverton's driving history from  
6 2005 until at least the point of the accident?

7 A. Whatever was provided to me in  
8 discovery.

9 Q. I notice in here that you didn't note  
10 any other motor vehicle accidents or citations.  
11 Correct?

12 A. Not that I'm aware of. Not to say  
13 that they didn't exist. But, not that I'm aware of.

14 Q. I have here a copy of plaintiff's  
15 complaint with civil cover sheet. You reviewed and  
16 analyzed that in the formulation of your opinions in  
17 this matter?

18 A. I did.

19 Q. Then I have here an FOIA request for  
20 records for Advantage Tank Lines, LLC d/b/a ATL  
21 Leasing, Inc. Did you review these in the  
22 formulation of your opinions rendered in this  
23 matter?

24 A. Yes. It's on my -- it's on my  
25 document -- documents reviewed section 9.0, "FOIA

1 request for records PSCWV, January 28, 2013."

2 Q. Did you make any commentary on these  
3 records in your report?

4 A. I would say likely not because of the  
5 fact that there's no flags at pages there. So, it's  
6 possible that I did not use -- although not to say  
7 that it didn't -- it didn't go into the total sum of  
8 my thought process.

9 Q. How did it go into the total sum of  
10 your thought process?

11 A. I could not give you a specific  
12 answer. I mean, it may have given me some guidance  
13 as --

14 Q. How so? It is your report. You  
15 reviewed the documents. How did it give you  
16 guidance?

17 A. There's nothing that's highlighted in  
18 there. There's no pages that are flagged. So, I  
19 can't specifically point to one thing.

20 Can I see the document, please?

21 Q. Sure.

22 A. Here's -- yeah. There is actually  
23 some highlighted sections in here. There was  
24 violations -- looking at violations of the motor  
25 carrier, FMCSA, the driver vehicle examination

1 reports. So, just looking at some of the violations  
2 that were inoperable. Required one of five cab  
3 lights inoperable, things of that nature. It  
4 essentially tells me about a motor carrier and what  
5 their habits are and how they conduct themselves  
6 from a driving standpoint from roadside inspections.  
7 Here you have ABS malfunction circuit. Are these  
8 things contributory to the crash? No. Are they  
9 things that tell me about the motor carrier that I  
10 can kind of put in my thought process? Sure.

11 Q. Did you mention the review of those  
12 reports anywhere --

13 A. No.

14 Q. -- in your report?

15 A. No, sir.

16 Q. If I am correct, those reports are  
17 concerning Advantage Tank Lines. Right?

18 A. That's correct. It's not specific to  
19 the driver.

20 Q. Do you know who Mr. Yelverton's  
21 employer was and under whose authority he was  
22 operating on the day of the accident?

23 A. That -- I just -- that's why I  
24 referred to ATL/KTC as the motor carrier. Because  
25 -- excuse me. Advantage Tank Lines, I believe was

1 the primary player here. Then it was Kenan  
2 Transport. Excuse me. Kenan Transport was primary  
3 and Atlantic tank -- Advantage Tank Lines is the  
4 owner of the tank line being transported by  
5 Yelverton. And Kenan Transport Company is a motor  
6 carrier and employer of Yelverton.

7 Q. Who would be responsible for the  
8 maintenance of this tractor trailer?

9 MS. RAINES: Object to the form.

10 A. Who would be responsible for the  
11 tractor trailer, or the tractor or trailer? They're  
12 two specific distinctly different units.

13 Q. Well, the tractor.

14 A. Okay.

15 Well, the owner of the cargo tank is  
16 Advantage Tank Lines. It depends on --

17 Q. We are talking about the tractor  
18 trailer.

19 A. Well, that is part of the tractor  
20 trailer. You're saying tractor trailer. So, I'm  
21 giving you the trailer. All right?

22 The tractor presumably is owned by  
23 Kenan Transport. I didn't see evidence one way or  
24 the other.

25 Q. Then I guess you can answer you don't



1 know.

2 A. Again, that's the reason I put in  
3 ATL/KTC, in order to cover both aspects of it.

4 Q. Let me ask you this.

5 You haven't made any commentary in  
6 this case concerning Advantage Tank Lines' program  
7 of maintaining their vehicles. Correct?

8 A. No, sir.

9 Q. You haven't made any commentary in  
10 this case with respect to Kenan Transport's program  
11 for maintaining their vehicles. Correct?

12 A. No, sir.

13 Q. I have here "Driver vehicle  
14 examination report" --

15 A. I believe that might be the same as  
16 this here.

17 Q. These very well could be duplicative,  
18 just not having the cover letter on it so we will  
19 move along.

20 A. Right.

21 Q. Then the "Business auto  
22 declarations." Did this formulate in to your  
23 opinions in this matter at all?

24 A. No, sir.

25 Q. It is essentially the insurance

1 sheet.

2                               These would be your documents that  
3 you have provided -- is this your bill?

4               A.           It is.

5               Q.           That wouldn't have gone in to your  
6 consideration?

7               A.           No. No, sir.

8               Q.           Then I see here a letter from myself  
9 to Mrs. Raines labeled -- dated September 13, 2013.  
10 "Responses to plaintiff's requests for admission of  
11 defendant, Reginald Kenneth Yelverton."

12                           Did you incorporate this in to your  
13 opinion?

14               A.           Let's take a look at the document if  
15 I could.

16               Q.           Sure.

17               A.           I would say no.

18                           For simplicity purpose, maybe we can  
19 just stack everything up we've gone through already.

20               Q.           I didn't know if you had that  
21 organized for your own ability to look through it.

22               A.           No. All the things that I don't need  
23 to go over later, I can stack up here.

24               Q.           Then I have here the driver training  
25 manual for Kenan Advantage Group. You reviewed this

1 driving manual?

2 A. Well, there's a lot of red flags on  
3 there. So, I would say that I certainly did review  
4 it. What was applicable -- there's a lot of red  
5 flags on there. So, there may be some issues on  
6 there.

7 Q. You would have reviewed that and  
8 incorporated the information in there in to your  
9 opinions --

10 A. Yes.

11 Q. -- that you rendered in this matter?

12 A. Yes, sir.

13 I mean, I did mention in the report  
14 that Yelverton was Smith System trained. Okay?

15 Q. Here, we have the "Repair order  
16 detail, Kenan Advantage Group." I guess you didn't  
17 really render an opinion with regard to the  
18 maintenance on this tractor trailer. Would you have  
19 incorporated these documents in to your opinion?

20 A. Anything outside of the -- anything  
21 outside of the turbo issue, the direct related issue  
22 here, I didn't -- I did not go in to detail of --

23 Q. A program or anything like that?

24 A. Yeah. Maintenance issues. Correct.

25 Q. When you say "the turbo issue," what

1 did you review as far as information related to the  
2 -- as you described it, "the turbo issue" in this  
3 matter?

4 A. Just the fact that it was taken to a  
5 different facility and that different facility, from  
6 the original record -- they transported it off to a  
7 different facility. And that facility had effected  
8 the repairs on turbo, which apparently, they were --  
9 yeah. I'm not quite sure -- there was a record  
10 invoice and that record invoice reflected the fact  
11 that it was taken to a different facility, where it  
12 was repaired -- the turbo, itself, was repaired.

13 Q. From those records that you are  
14 talking about, you can continue to look for them as  
15 we ask these questions, did it say what was wrong  
16 with the turbo? Do you know?

17 A. No. Based on -- based on what  
18 Yelverton said, it was a pop sound. Essentially,  
19 the turbo blew up. And here you have the various  
20 parts and so forth that were replaced on it. It was  
21 "Turbo seals and turbine are bad." This is -- I'm  
22 quoting from the repair order detail from Kenan  
23 Advantage Group. And it's "Replace turbo and MTG  
24 kit." I'm not sure what that is. "Calibrated the  
25 turbo." So, essentially, my interpretation of this

1 is the turbo failed. It blew up.

2 Q. Have you ever done any work in your  
3 career as an auto mechanic?

4 A. Other than working on my own trucks.  
5 I had -- I owned a fleet of tractor trailers back  
6 some years ago. I also was a driver for many -- not  
7 many years. But, for a few years. Driving 18  
8 wheelers. So, I did all of my own mechanical work.

9 Q. Now that we are on the subject, you  
10 owned a hazmat response team for a while there.

11 A. I did.

12 Q. Do you ever remember being called  
13 upon by Kenan Advantage Group to respond to spills?

14 A. I'm pretty sure we have. Yeah. I'm  
15 pretty sure we have.

16 Q. Does that at all affect your ability  
17 -- did you gain any information from that prior  
18 relationship with Kenan Advantage Group that  
19 affected your -- the opinions that you have rendered  
20 in this case?

21 A. Oh. No, sir. I vaguely even  
22 remember doing work for them. But, I know that --  
23 I'm pretty sure that we had done some work with them  
24 over the years.

25 Q. This is repair order 9601-0018789

1 that you had previously talked about. You reviewed  
2 this --

3 A. I did.

4 Q. -- and it factored in to your  
5 opinions that you rendered in this matter.

6 Then I have here the June 15, 2011  
7 tractor preventative maintenance. Did you review  
8 this document and consider this document --

9 A. Yes, sir.

10 Q. -- in the formulation of your  
11 opinions?

12 A. Yes.

13 Q. We have some photographs here. Who  
14 provided these photographs to you?

15 Do you know who took those  
16 photographs? Let me ask you this photograph first.

17 A. I got these from Mrs. Raines. And I  
18 believe that these were taken by Mr. Yelverton.

19 Q. Again, we have the State Police crash  
20 report.

21 Then there are some additional  
22 photographs -- I believe --

23 MR. MONTGOMERY: Are those the State  
24 Police photos?

25 MS. RAINES: Yes.

1 A. Yes. State Police photographs.

2 Q. For the record, the photos that we  
3 just discussed were the color copies of the State  
4 Police photographs?

5 A. Correct. These are from the State  
6 Police.

7 Q. I am going to hand you a copy of  
8 black-and-white photos. Did you review those in the  
9 formulation of your opinions in this matter?

10 A. I did.

11 Q. Do you know who took those  
12 photographs?

13 A. These appear just to be the same.  
14 Just a different -- just black-and-white versus  
15 color.

16 Yeah. These are the same pictures.  
17 Just black-and-white versions evidently.

18 Q. They are?

19 A. Yeah. Appear to be.

20 Q. The next set of documents we have  
21 here are "Defendants' supplemental and rebuttal Rule  
22 26(a)(2)(B) disclosures. Did you review these  
23 documents in the formulations of your opinions in  
24 this matter?

25 A. I did.

1 Well, actually, I received these --  
2 these were received after my report.

3 Q. Correct.

4 A. So, I -- you know, I -- in my mind, I  
5 have some opinions on it. But, these are received  
6 post report.

7 Q. What we have right here is the ETOG  
8 data from the Kenan Transport tractor trailer. Did  
9 you review this data in the formulation of your  
10 opinions?

11 A. I sure did.

12 Q. I believe attached to this are some  
13 calculations that appear to be your calculations.  
14 Is that accurate?

15 A. Yes, sir.

16 Q. What are these numbers based off of?

17 A. They're based off of 15 second  
18 increments on the -- on the graph, itself. On the  
19 ETOG. So, it's breaking down approximate 15 second  
20 increments of activities of the commercial motor  
21 vehicle of Yelverton's truck leading up to the  
22 crash.

23 Q. Why was that important to do in your  
24 analysis?

25 A. To demonstrate that Yelverton



1 essentially, for all intents and purposes, parked --  
2 you know, parked his commercial motor vehicle on the  
3 highway. Broke down on the highway. But,  
4 essentially, was parked on the highway.

5 Q. I think in your report, you note that  
6 he was still moving.

7 A. There's no absolute conclusive  
8 evidence that says that he was definitely moving.  
9 There's also -- I believe that he may have come to a  
10 complete stop. I gave him some latitude in saying  
11 that it may have been five miles per hour. But,  
12 I've also looked at it and said that looking at the  
13 ETOG, there is at one point here where he comes to a  
14 complete stop.

15 Q. His speed is obviously important to  
16 your -- to the opinion that you have rendered.  
17 Correct?

18 A. Sure. Because it was an indicator to  
19 him that there's something wrong with my truck and I  
20 better get it off the highway.

21 Q. Did you take into consideration, when  
22 formulating your opinions in this matter, the speed  
23 of the Hartung vehicle at all?

24 A. I think we've already covered that  
25 and that's -- I didn't get into the breakdown

1 Hartung's vehicle.

2 Q. Did you take into consideration  
3 closing distance with respect to the Hartung vehicle  
4 based on her speed and Mr. Yelverton's speed?

5 A. Well, say asked and answered. Right?

6 Q. Is that a no?

7 A. That's a no.

8 Q. What we have here is just an  
9 additional ETOG data with some handwritten notes on  
10 it. Did you take into consideration this data in  
11 the formulation of your opinions that you have  
12 rendered in this matter?

13 A. I did.

14 Q. Again, additional ETOG data.

15 A. Yeah. That's multiple copies in  
16 there. The same.

17 Q. I have here some handwritten notes --

18 A. They're field notes when I was at a  
19 crash -- at the crash site.

20 Q. When did you visit the crash site?

21 A. January 24, 2014.

22 Q. Do you remember what approximate time  
23 you visited the crash site?

24 A. It was later in the afternoon. It  
25 was around 4 -- about 4 o'clock.

1 Q. While we are on the topic, did one of  
2 the things that you observed at the crash site --  
3 would one of the things you observed at the crash  
4 site have been Ms. Hartung's line of sight as she  
5 approached the accident scene?

6 A. Did I observe that?

7 Q. Yes.

8 A. Well, I ran the stretch of the  
9 highway a couple times.

10 Q. Were there any obstructions --

11 A. No, sir.

12 Q. Let me ask.

13 Were there any obstructions in Ms.  
14 Hartung's line of sight as she approached the  
15 accident site?

16 MS. RAINES: Objection to  
17 hypothetical, form.

18 A. Other than the potential of a vehicle  
19 being in front of her, to the best of my knowledge,  
20 no.

21 Q. Again, you reviewed Ms. Hartung's  
22 deposition testimony.

23 A. Yes.

24 Q. Do you recall her mentioning any sort  
25 of vehicle in between her and the tractor trailer?



1     you a question about whether you had taken into  
2     consideration Ms. Hartung's line of sight inability  
3     to perceive the tractor in to your consideration  
4     formulating your opinion. You said you didn't know  
5     if there was any information on that. Is that  
6     correct?

7                     MS. RAINES: Object to the form.

8             A.       There is no -- as far as if there was  
9     no vehicle in front of her, then there would be  
10    nothing affecting her line of sight. If there were  
11    a vehicle in front of her, then there would be an  
12    effect of her line of sight and reaction time.

13            Q.       I think you testified earlier, too,  
14    that you didn't consider Ms. Hartung's actions or  
15    inactions because you didn't know whether there was  
16    a vehicle to her left that would have affected her  
17    ability to turn and things of that nature. Is that  
18    correct?

19            A.       That's correct.

20                     I just don't recall, in her  
21    testimony, whether she had stated that there was a  
22    vehicle to her left -- or she didn't know. I don't  
23    recall.

24            Q.       If there were not vehicles to her  
25    left, would that have factored in to your analysis

1 with regard to her ability to changing lanes and  
2 avoid striking the --

3 A. Let's put it this way. If there were  
4 a vehicle that was just trailing her but in the left  
5 lane, it may have affected her judgment time, her  
6 time of reaction. So, in other words, as she's  
7 driving along doing 65 miles an hour, she closes  
8 into about 500 feet of that vehicle -- of the  
9 commercial motor vehicle parked in the left -- in  
10 the right lane and if there was a vehicle just  
11 trailing her and she looked in her mirror, saw that  
12 vehicle, that would account for a few seconds of her  
13 making that quick reaction decision to cut left.  
14 Now, she makes that left-hand -- that left lane  
15 change cut. In the process of that, she strikes the  
16 commercial motor vehicle. Is that a possibility?  
17 It is. Was there any mention of a trailing vehicle  
18 behind her? I don't believe that there was.

19 Q. If there were no vehicles, does that  
20 affect your analysis?

21 A. Her reaction may have be more swift.  
22 May have been.

23 Q. In your professional opinion, what  
24 should her reaction have been to perceive and react  
25 to the tractor trailer in front of her? How much

1 time before -- from when she perceived the potential  
2 danger to when she should have changed lanes should  
3 have elapsed?

4 MS. RAINES: Object to the form.

5 A. Perception and reaction -- reaction  
6 is gonna be approximately 1.5 to 1.6 seconds. All  
7 right? Looking at an average. So, if you have a  
8 1.5 to 1.6 seconds, 65 miles an hour, at 95 feet per  
9 second, so you immediately lose 150 feet  
10 approximately. 150 to 160 feet.

11 So now if she has that vehicle --  
12 like I said, if there was a trailing vehicle but in  
13 the left lane right behind her, that could consume  
14 another two seconds on that decision making process  
15 and we have no idea whether there was or there  
16 wasn't. We don't have -- and I believe that there  
17 was no testimony as to a vehicle being in front of  
18 her.

19 Q. Let's do the analysis without a  
20 vehicle.

21 A. Okay.

22 Q. How many seconds would it take for  
23 her to perceive the tractor trailer in front of her  
24 -- how much time would elapse between when she  
25 perceived the tractor trailer in front of her

1 slowing down to when she could have changed lanes?

2 How much time would elapse?

3 MS. RAINES: Object to form.

4 A. Perception to reaction?

5 Q. Yes?

6 A. 1.5 to 1.6 seconds roughly. Barring

7 no other vehicles were in the area, as you said.

8 Q. Do you know what the -- a looming

9 threshold is?

10 A. Sure. That's that closing point as

11 to which she has that decision to make.

12 Q. How many feet would have been between

13 her and the Kenan Advantage tractor trailer when she

14 realized that she needed to move?

15 MS. RAINES: Object to the form.

16 A. About --

17 Q. Or hit her brakes?

18 A. About 500 feet. From the point of

19 reaction. It would be between 400 and 500 feet

20 roughly.

21 Q. Do you know -- you didn't do this

22 analysis in your report. I understand. Do you know

23 what the closing speed was at that point in time?

24 A. Well, she was traveling at

25 approximately 65 miles per hour. I believe she



1 testified at about 65 miles per hour. So, 65 miles  
2 per her, again, is 95 feet per second.

3 Q. Not if the tractor trailer is moving  
4 at 5 or 10 miles an hour. Correct?

5 A. Yeah. But, I don't believe that the  
6 tractor trailer is moving.

7 Based on the evidence of the ETOG,  
8 the tractor trailer, to me, because -- because there  
9 is a point as to which the tractor trailer comes to  
10 a complete stop at zero miles per hour. Then he is  
11 struck. And that's just before 6/29/11. Then he is  
12 struck. And then he takes another 15 seconds to get  
13 -- to limp his commercial motor vehicle off the  
14 roadway on to the shoulder.

15 Q. So your opinion that you are giving  
16 me here today was that he was stopped when he was  
17 hit?

18 A. I believe that he was stopped. But,  
19 I've given him some degree of latitude on my report  
20 in saying that possibly up to five miles per hour.  
21 Something in terms of that language.

22 Q. Whether he was moving at 5 miles an  
23 hour, 10 miles an hour, or stopped, that would have  
24 an affect on the amount of distance that she was  
25 closing on him. Correct?

1 MS. RAINES: Object to the form.

2 A. It would be nominal. Your five miles  
3 an hour to 65 miles an hour. So, your closing speed  
4 is now 60 miles an hour. If it were, in fact, 5  
5 miles per hour.

6 Q. Your testimony, sitting here today,  
7 500 feet from the tractor trailer she should have  
8 perceived that there was a danger and began an  
9 evasive maneuver?

10 MS. RAINES: Object to the form.

11 A. I believe I said 4, 500 feet.  
12 Barring no vehicles in the immediate area.

13 Q. Did you take into consideration the  
14 duration of time that Ms. Hartung first perceived  
15 the tractor trailer to when the accident happened in  
16 your analysis?

17 A. Well, I don't know how many feet back  
18 that she actually did perceive it. But, assuming 4,  
19 500 feet. That's all we can go off of.

20 Q. Well, as something that you learned  
21 at the University of North Florida, did they talk  
22 about when a closing vehicle would perceive that  
23 there was a potential danger in a situation like  
24 this?

25 A. Well, she could see the -- you know,

1 a vehicle possibly out a thousand feet. Or even  
2 greater.

3 Q. I am talking about the point that she  
4 would have realized that there was an imminent  
5 collision or the potential for a collision.

6 A. Again, that would be that 4 or 500  
7 feet.

8 Q. I am going to introduce here Exhibit  
9 D.

10 (Exhibit D, Transcript excerpts,  
11 marked for identification.)

12 Q. This is the deposition testimony of  
13 Ms. Hartung which you have reviewed in this matter.  
14 If you could, read into the record the parts that I  
15 highlighted there or underlined rather.

16 A. Okay. It's -- starts out a question  
17 on page 108-11.

18 "Question: Now in the 40 seconds,  
19 you know, the 40 second time period from which when  
20 you first observed the tractor trailer to the point  
21 of impact, were you paying attention to what you  
22 were doing? Were you paying attention to the  
23 traffic around you and the tractor trailer?"

24 She replies: "Yes."

25 "Question: And was there any other

1 traffic in the area at the time?

2 Answer: No.

3 Question: So basically it was just  
4 your vehicle and the tractor trailer on the road?

5 Answer: Correct."

6 Q. The next page, it continues on.

7 A. Page 109, line 1.

8 "Question: So there would have been  
9 nothing there to distract you?

10 Answer: No.

11 Question: Since there were no other  
12 vehicles on the road, then there was nothing to your  
13 left that would have prevented you from switching  
14 lanes and avoiding the tractor trailer?

15 Answer: Had I had noticed that there  
16 was a tractor --

17 Question: My question was, there was  
18 no vehicles to your left that would have stopped you  
19 from switching lanes and hitting the tractor  
20 trailer?"

21 And Ms. Bowles' objection to form.

22 "Answer: There were no vehicles to  
23 my left."

24 Q. Does that change or alter your  
25 analysis with respect to Ms. Hartung's perception-

1 reaction as it relates to this collision?

2 MS. RAINES: Object to the form.

3 A. Slightly. But, not necessarily  
4 incomplete. The reason I say that is because she  
5 said you're speaking to her about a vehicle  
6 immediately to her left. Again, if there was a  
7 vehicle trailing her to the left-hand lane, that may  
8 have given her a split-second decision to make that  
9 decision to make that cut to the left lane.

10 Q. So you are taking the answer -- the  
11 question "So basically it was just your vehicle and  
12 the tractor trailer on the road? Answer: Correct"  
13 to mean that there's still potentially another  
14 vehicle behind her that would've distracted her?

15 A. At 10 o'clock in the morning heading  
16 towards Charleston, West Virginia, I find it highly  
17 improbable that there were no other vehicles within  
18 sight distance. I just find that highly improbable.

19 Q. So you are saying that Ms. Hartung's  
20 testimony is incorrect?

21 A. No. No.

22 MS. RAINES: Object to the form.

23 A. I'm not saying her testimony is  
24 incorrect. I'm saying that once she crashed, maybe  
25 at that point in time, the shock of the situation

1 and so forth, she's medivac'd out, all right, that  
2 that possibly could've skewed her mindset and her  
3 thinking. All right? There was -- I'm just saying  
4 if there was -- if there was a vehicle that was left  
5 of her, behind her, that's not a vehicle next to  
6 her, as she testified.

7 Q. As an expert, you have to look at the  
8 information that is available to you.

9 A. Facts.

10 Q. The facts.

11 A. Correct.

12 Q. Her testimony is factual testimony in  
13 this matter.

14 A. That's correct. But, it does not say  
15 the vehicle -- it says vehicle next to her.

16 Q. But you just said to me "if there was  
17 another vehicle" in the area. Now aren't you making  
18 assumptions that aren't necessarily supported by the  
19 evidence?

20 MS. RAINES: Object to the form.

21 A. Again, I'm saying -- I'm saying if.  
22 And it's a big if.

23 Q. If what? If there was another  
24 vehicle, it might have affected her perception-  
25 reaction. But, is there any information that there

1 was another vehicle in the area? Yes or no?

2 MS. RAINES: Object to the form.

3 A. No. Based on her testimony, no.

4 Q. It is your opinion that going to  
5 Charleston at 10 o'clock in the morning, you don't  
6 believe that her testimony is accurate?

7 MS. RAINES: Object to the form.

8 A. I'm not saying that her testimony is  
9 inaccurate. I'm saying that there is a possibility  
10 that she was not -- at that point in time, after the  
11 crash, as a result of the traumatic experience that  
12 she suffered, that there could've been a vehicle  
13 that was not next to her, as I said, a vehicle  
14 that's further back.

15 If the question was asked was there a  
16 vehicle at your 5 o'clock position, 12 o'clock being  
17 straight ahead -- excuse me. Your 8 o'clock  
18 position. That question wasn't asked. All right?  
19 Is there any other vehicles on the highway? I find  
20 it improbable that there were no other vehicles  
21 within sight distance. Is it possible? Yeah. Sure  
22 it's possible.

23 Q. Again, the question was "So basically  
24 it was just your vehicle and the tractor trailer on  
25 the road?" She says "Correct."

1                   Question: There were no vehicles to  
2 the left that would've stopped you from switching  
3 lanes to avoid you from hitting the tractor trailer?

4                   Answer: There were no vehicles to my  
5 left?"

6                   I'm just reading the testimony.

7                   A. I understand.

8                   I'm certainly not entitled to my own  
9 facts. The facts are the facts.

10                  What she testifies to, I have to -- I  
11 have to believe what she's saying. But, also, there  
12 is a traumatic crash that occurred here. This woman  
13 is severely injured. You know. Is it possible that  
14 that affected her decision making process just  
15 before she was making that cut to that left lane?  
16 It's possible. But, again, that's just something  
17 that I'm saying. Was there a vehicle directly in  
18 front of her that cut out in front of her? I don't  
19 know the answer to that either.

20                  Q. But you are not here to talk about  
21 what's possible.

22                  A. Right.

23                  Q. You are here to render opinions  
24 within a reasonable degree of accident  
25 reconstruction certainty. Correct?



1 A. Correct.

2 Q. If you were doing a perception-  
3 reaction analysis with respect to the Hartung,  
4 vehicle based on this testimony, you wouldn't  
5 consider any distraction behind her. Is that  
6 accurate?

7 MS. RAINES: Object to the form.

8 A. That's correct.

9 Q. Right here, that's another bill. I  
10 am not concerned with that.

11 A. Well, I am.

12 MS. RAINES: That one is for you.

13 Q. You have here a "Capability of heavy  
14 truck electronic control module ECM data." Describe  
15 to me what these documents are.

16 A. Sure. This is in relation to  
17 Edwards' testimony -- excuse me. Edwards' report.  
18 Where he didn't visit the site. But, he renders  
19 opinions as to what happened on this crash scene.  
20 And one of the things here in this component  
21 document here, "Capability of heavy truck electronic  
22 control module, ECM data," there's a statement that  
23 says "ECM data can be quite valuable in analysis and  
24 reconstruction of heavy truck accident. However,  
25 the physical evidence is also important and relying

1 exclusively on ECM data can lead to incorrect or  
2 unreliable conclusions."

3 So my point is and the reason this  
4 was brought forth was that Mr. Edwards never visited  
5 the site to the best of my knowledge. All right?  
6 And he used photographs to make determinations of  
7 what occurred. In addition, a couple other issues  
8 if you'd like, since this is the next document, we  
9 can kind of tie them in together.

10 Q. Let's stick with that. Then we'll  
11 move on to that.

12 A. Sure.

13 Q. Had Mr. Edwards visited the site,  
14 would that have changed any opinion that you have  
15 with regard to his conclusions?

16 A. I -- if he was at the site, the  
17 opinions may hold a little bit more water.

18 Q. What is it that you -- what  
19 information are you relying on to believe that he  
20 didn't visit the site?

21 A. It wasn't in his report, to the best  
22 of my knowledge. The best of my recollection I  
23 should say.

24 MR. MONTGOMERY: I am going to mark  
25 this as Exhibit E. This is the report of Mark Lee

1 Edwards.

2 (Exhibit E, 1/14/14 expert report,  
3 marked for identification.)

4 Q. If he did visit the site, how would  
5 that have changed your opinions regarding his  
6 conclusions?

7 A. Well, very -- variables of the site.  
8 I mean, the lane widths. I don't believe he made  
9 mention of there being 11 foot lanes, whereas also  
10 Rickard said 12 foot lanes. The consideration of  
11 slopes of the roadway. Inclines of the roadway and  
12 so forth. Line of vision. You know. Taking it off  
13 my information rather than -- rather than actually  
14 having facts of his own.

15 Q. Did you form an opinion with regard  
16 to Mr. -- Dr. Edwards' opinions?

17 A. No. I got his -- again, I got his  
18 report after.

19 Q. I know you haven't authored a report  
20 on it. As you sit here today and I ask you the  
21 question do you have an opinion with respect to the  
22 conclusions reached by Mr. Edwards, could you tell  
23 me what those opinions are?

24 A. Well, there's a couple of them.  
25 Number one is that he's critical of my terminology

1 of inattention blindness. And he comes out and  
2 calls it a -- oh, boy. In intentional blindness.  
3 Correct. Where my phraseology is inattention  
4 blindness. He would have to argue that point with  
5 National Safety Council 'cause National Safety  
6 Council calls it inattention blindness, not an in  
7 intentional blindness. That's one.

8 And two would be that on his report,  
9 he has calculations as to closing speed and so forth  
10 and what Ms. Hartung should have done as far as  
11 being evasive of this crash. He refers to the ECM  
12 data. I never received any ECM data to even  
13 consider his comments. There's no ECM data  
14 available.

15 Q. I think he is making reference to the  
16 ETOG data.

17 A. Well, I can't make that assumption at  
18 this point.

19 He put down ECM. ECM is a component  
20 on the truck, which is essentially the brain of the  
21 truck.

22 ETOG is something by CADEC,  
23 C-A-D-E-C, which is managed outside of the -- at the  
24 corporate office by a desktop. They can look at a  
25 driver and see what that driver is doing.

1                   So, he took either the wrong  
2   information or information that was not available to  
3   me to come up with his conclusions.

4           Q.       Other than that and the fact that he  
5   didn't visit the site, is there any other issues you  
6   take with his report?

7           A.       No, sir.

8           Q.       Did he use the correct looming  
9   threshold in his report?

10                   MS. RAINES: Objection to form.

11           A.       I would say approximately 65 miles  
12   per hour roughly. Yes.

13           Q.       I believe his was 506 feet.

14           A.       Well, I said between 4 and 500 feet I  
15   think it was.

16           Q.       When you say between 4 and 500 feet  
17   is the looming threshold, what scientific  
18   literature, treatise, or authority are you using to  
19   come up with 4 to 500 feet?

20           A.       It was 65 miles per hour. He was  
21   traveling 65 miles per hour -- she was traveling 65  
22   miles per hour, 95 feet per second.

23           Q.       What treatise says it's 400 to 500  
24   feet if it's 65 miles an hour?

25           A.       I don't have reference to that.

1 He puts 506 feet looming threshold.

2 Q. Is that right?

3 A. Yeah. It sounds about right. Yes.

4 That's where I said earlier 4 to 500 feet.

5 Q. I am wondering where the four is  
6 coming from. Is there something you are relying on  
7 that I need to look at that says that 400 feet at 65  
8 miles an hour is the looming threshold?

9 A. It's gonna be on an individual basis.  
10 I mean, you can't nail down exactly 506 feet and say  
11 that you, Counselor, at 506 feet are going to see  
12 something that I may see at 400 feet. Ms. Raines  
13 may see at 450 feet.

14 Q. When you are doing an accident  
15 reconstruction, you have to use numbers that -- and  
16 data that are generally accepted by the scientific  
17 community. The accident reconstruction community.  
18 Correct?

19 A. Right. But, it is a variable number.  
20 It's not a concrete number. At 65 miles per hour on  
21 a roadway with no visual impairments and anything  
22 blocking the view or blind turns or what have you at  
23 65 miles per hour, that speed is going to be -- you  
24 can't nail down say it's going to be five -- all  
25 professional -- excuse me. All expert opinions and

1 all treatises and so forth would say that it is an  
2 approximate. Just like, for example -- stopping  
3 distance. It's going to depend on certain  
4 variables. All right? Reaction time. They say an  
5 average reaction time is gonna be 1.5 seconds, 1.6  
6 seconds. They don't say that reaction time is  
7 concrete for everybody at 1.5 seconds. It's an  
8 average. Some older folks' reaction time may not be  
9 but 3.3 seconds.

10 Q. But we are doing a reconstruction.  
11 We have to use a number. What we use are the  
12 generally accepted numbers like the ones that you  
13 learned at IPTM. Correct?

14 A. Yes.

15 Q. Would 506 feet at 65 miles per hour  
16 be an accepted number?

17 A. Certainly. I'm not arguing with 506  
18 feet.

19 Q. My question to you is, what analysis  
20 did you use or what authority or treatise did you  
21 use to come up with 4 to 500 feet?

22 A. I don't -- I don't recall. I mean, I  
23 don't have it listed on my report as documents  
24 reviewed or documents reviewed -- references.

25 Q. Prior to sitting here today, did you

1 say 4 to 500 feet or did you not even consider that  
2 when doing your report?

3 MS. RAINES: Object to the form.

4 A. Well, no. I didn't consider it  
5 because I didn't have Mr. Edwards' report at that  
6 time. So, it's not included in my report. It's  
7 nothing that I -- that I had added into my report  
8 because I didn't have -- was not available to his  
9 report at this given time. I received it after the  
10 fact.

11 Q. Just for the sake of clarification, I  
12 am going to introduce Dr. Edwards' report as Exhibit  
13 E. I am going to point you to the "Materials  
14 reviewed" page. If you look at the third bullet  
15 point down, did Dr. Edwards, in fact, inspect the  
16 scene of the accident?

17 A. Apparently. Yes. "Materials  
18 reviewed, inspection of collision site."

19 Okay. I missed that. Again, I just  
20 reviewed this report recently. I did not see what  
21 he actually reviewed.

22 Q. You said before if he had inspected  
23 the report, that you would give more weight to his  
24 opinions?

25 A. Well, the 500 feet does not change.



1 All right? There's the 506 feet. No. I'm not  
2 changing that opinion at all.

3 What I am -- what I am concerned  
4 about is the fact that he is using ECM data that I  
5 was not privy to at the time of authoring my report.  
6 And I'm not going to comment on something that I  
7 have not reviewed. All right?

8 Q. There is no ECM data. I am telling  
9 you it is the ETOG data. It may be a difference in  
10 terminology. Certainly, today at some point in  
11 time, I am going to call something something that  
12 you don't call it. But I am telling you right now,  
13 there is no ECM data.

14 A. Well, it's all that I have to base it  
15 on, is that he wrote his report. He authored his  
16 report on ECM data. So, I really can't -- I can't  
17 oh point on that because of the fact that I don't  
18 have access to ECM data. I cannot make an  
19 assumption. As you well know, I can't make an  
20 assumption that he went off of ETOG.

21 Q. Sure. Okay.

22 The next item we have here that you  
23 looked at, reviewed, and considered in formulating  
24 your opinions would be the deposition of Ms.  
25 Hartung. Correct?

1 A. That's correct.

2 Q. And then the videotaped deposition of  
3 Reginald Yelverton.

4 A. Yes, sir.

5 Q. Did you actually look at the  
6 videotape or did you just review the transcript?

7 A. Just the transcript.

8 Q. The next item would be the videotaped  
9 deposition of Mark Follett.

10 A. Yes, sir.

11 Q. What is your understanding as to what  
12 Mr. Follett's role in this matter is?

13 A. Corporate representative of KTC-ATL.

14 Q. Then you considered the deposition of  
15 Roger Yelverton.

16 A. His father. That's correct.

17 Q. We have here the depositions of Dr.  
18 Biundo Hubbard. I am assuming you didn't pay too  
19 much attention to those.

20 A. No, sir. I didn't.

21 Q. Then we have "Answers to plaintiff's  
22 first set of interrogatories, requests for  
23 production of documents, and requests for admission  
24 to defendant, Advantage Tank Lines, d/b/a ATL  
25 Leasing, Inc." Did you review and consider this

1 document in formulating your opinions?

2 A. Yeah. Essentially just for motor  
3 carriers' name. There was nothing of significant  
4 relevance that I had taken out of here.

5 Q. How about answer to "Plaintiff's  
6 first set of interrogatories, request for admissions  
7 to Reginald Yelverton"? Did you consider this  
8 document -- these documents in formulating your  
9 opinion?

10 A. I did. And what it was -- and I go  
11 back on an answer that I had responded to prior  
12 about Yelverton's driving history as it pertains to  
13 crashes. In October of 2011, and I took  
14 consideration -- it says under number nine, on this  
15 document, "Defendant was involved in a motor vehicle  
16 accident where his vehicle was struck by pulling out  
17 of a parking lot by at fault vehicle in October  
18 2011."

19 Not that it has any significant  
20 weight or anything. But, it was just something I  
21 did take into consideration.

22 Q. Other than that accident, you don't  
23 recall any accidents while he was driving a  
24 commercial motor vehicle?

25 A. No, sir. To the best of my

1 knowledge. No.

2 Q. Here we have some documents State  
3 Farm Insurance Company issue tod Susan B.  
4 Rawlinitis, ETOG data, cell phone records. Did you  
5 take this into consideration?

6 A. I did.

7 It just demonstrated to me that Ms.  
8 Hartung was not on her cell phone at the time of the  
9 crash.

10 Q. Did you take into consideration the  
11 responses to plaintiff's request for admissions to  
12 defendant, Reginald Yelverton or did we already  
13 cover this?

14 A. Hold on a second. I have something  
15 here highlighted. I did. 'Cause there's two -- it  
16 says "It is admitted that Mr. Yelverton began  
17 experiencing engine problems before the accident.  
18 It is further admitted that his speed decreased  
19 before his trailer was struck by plaintiff."

20 So, that tells me that he had plenty  
21 of advanced warning, up to five minutes, that he was  
22 having --

23 Q. How does that sentence right there  
24 tell you that he had five minutes?

25 A. Well, I'm taking that information and

1 combining that along with the ETOG data. That  
2 demonstrates to me that his commercial motor vehicle  
3 began experiencing some kind of mechanical issue  
4 about five minutes before there. 'Cause I drove  
5 that stretch of the highway and it was a stretch of  
6 highway that did not have any aggressive mountains  
7 that would have called for such low drops in speed.

8 Q. Did you take into consideration Mr.  
9 Yelverton's testimony about the engine issue?

10 A. Well, yeah. But, I didn't take --  
11 you know. I think -- I believe he's a -- he lacks  
12 credibility. His credibility issues really -- once  
13 I start seeing things from a credibility standpoint,  
14 I take that information and I kind of put that in my  
15 mind when I'm developing a report and wonder if this  
16 person is being truthful with further questions or  
17 answers.

18 Q. Do you have a degree in psychology,  
19 or psychiatry, or other scientific background?

20 MS. RAINES: Object to form.

21 A. No.

22 I have 52 years of being able to  
23 determine if somebody -- I have 52 years of common  
24 logic of being able to determine if somebody is not  
25 being truthful. I have employed literally hundreds

1 and hundreds of people, and interviewed, and so  
2 forth.

3 So, no. Certainly I have no degree  
4 in psychology. But, you know, I think it's -- I  
5 think my years of experience in being able to  
6 determine if somebody is lying to me and whether  
7 it's being untruthful in a deposition or, you know,  
8 one-on-one basis, I don't think I need a psychology  
9 degree to understand that.

10 Q. Have you ever rendered an opinion  
11 with respect to somebody's credibility in a court of  
12 law?

13 MS. RAINES: Object to form.

14 A. No, sir.

15 MR. MONTGOMERY: What is the  
16 objection to that?

17 MS. RAINES: Because it was just a  
18 hypothetical question.

19 MR. MONTGOMERY: He is talking about  
20 the credibility of Mr. Yelverton. I am asking if he  
21 has ever rendered an opinion in a court of law with  
22 respect to credibility. That's a very plain and  
23 simple question.

24 A. Right. My response is no.

25 If you look at the few things that

1 concern me as to Yelverton's credibility, it is he's  
2 on his cell phone and he says -- he testifies he  
3 doesn't drive and talk on his phone. He says that  
4 he doesn't drive and talk on his phone. When you  
5 look at his cell phone records, he's engaged in a  
6 plethora of conversations prior to this point in  
7 time of the crash.

8 In addition, he says that he did not  
9 -- now here's a man who is a truck driver that  
10 drives the interstate system on a daily basis and I  
11 don't know any interstate system that doesn't have  
12 an improved shoulder. And he says that he didn't  
13 take his commercial motor vehicle off of the travel  
14 lane portion of the highway because he didn't want  
15 to drive off the mountain. So, is it realistic that  
16 he doesn't believe that there is a shoulder  
17 available for him to escape to as at least a safe  
18 refuge or even the interchange just prior to the  
19 crash at 106?

20 Q. My issue really is, you were retained  
21 to give an opinion with respect to who was at fault  
22 for the accident. Not necessarily to make a  
23 commentary on someone's credibility, which is up to  
24 the jury to do. You understand that?

25 A. Sure.

1 But, I don't believe that the jury's  
2 gonna be taking depositions in the back and making a  
3 determination.

4 Q. I don't think you are going to be  
5 able to comment on his credibility at least as it  
6 relates to the what your opinion of it is at trial.

7 A. But, if there are things that affect  
8 my opinions, all right, such as is in my report,  
9 cell phone usage, I believe that's a relevant issue.  
10 All right? Yeah. Certainly. Am I gonna be the one  
11 testifying on it? Maybe not. All right? But, I  
12 believe that I have a right to make that  
13 determination about truthfulness based on his -- his  
14 statement saying he doesn't talk on his cell phone  
15 while driving and then to turn around and look at  
16 his cell phone records and see that he's had a  
17 plethora of conversations before the crash.

18 Q. He testified that he talked on his  
19 cell phone at his deposition, though. Did he not?

20 MS. RAINES: Object to the form.

21 A. While he is driving?

22 Q. Yes.

23 A. I -- I thought that he said in  
24 deposition that he didn't -- he does not talk on his  
25 cell phone while driving.



1 Q. He testified that he made a phone  
2 call to his father prior to the accident.

3 A. Right. But, in general, he says --  
4 that's a different scenario because of the simple  
5 fact of the crash.

6 Q. We're distinguishing between in  
7 general and the accident now?

8 A. And I said a plethora of phone calls  
9 prior to the crash.

10 Q. Okay.

11 A. Not the one that's relative to the  
12 crash, itself.

13 Q. But you made a credibility  
14 determination based on the fact that he said he  
15 doesn't talk while he is driving. But he did say he  
16 talks while he is driving at his deposition. Yes or  
17 no?

18 MS. RAINES: Object to the form.  
19 It's argumentative.

20 A. To call his father and say I've got a  
21 problem with my truck.

22 Q. So yes?

23 A. To call his father and say I've got a  
24 problem with my truck.

25 Q. So yes?

1           A.           Well, in addition, there's also the  
2     fact of him stating that he could not pull his truck  
3     off the site of the road, which clearly --

4           Q.           With all due respect, please keep  
5     your answers responsive. This isn't a platform for  
6     you to say whatever it is you want to say. I'm  
7     asking the questions, you are giving me the answers.  
8     I've given you a ton of latitude so far with respect  
9     to sort of veering off the path of what's being  
10    asked of you. If there is no question, I would  
11    appreciate it if you wouldn't just go into some sort  
12    of diatribe about something that we are not even  
13    talking about yet. We will get there. You will  
14    have your opportunity to render an opinion. I'm  
15    asking you to, please, answer the questions that  
16    have been asked of you.

17           MS. RAINES: That's fine. But I  
18    would ask that you allow him to answer the question  
19    that you pose instead of a yes or no and trying to  
20    cut short.

21           MR. MONTGOMERY: Fair enough. I  
22    think yes or no questions are totally appropriate in  
23    every deposition I've been involved in. The witness  
24    is refusing to give a yes or no answer.

25           MS. RAINES: Don't refuse to give a

1 yes or no answer. Please answer the questions with  
2 a yes or no and then give the remainder.

3 THE WITNESS: With explanation.

4 A. The other thins is, too is that --

5 MS. RAINES: There's no question  
6 pending.

7 Q. Here we have the "Operating carrier,  
8 Kenan Transport Company, certificate of equipment  
9 lease." Did you review this and consider it in your  
10 opinion?

11 A. I did.

12 Q. Then we have "Plaintiff's responses  
13 to defendant's first set of interrogatories and  
14 request for production of documents." Did you  
15 review these and consider them in your opinion?

16 A. I did.

17 Q. Here we have the "Defendant's Rule  
18 26(a)(2)(B) disclosures I believe that we have  
19 already discussed that you have looked at these, and  
20 reviewed them, and considered them in your opinion.

21 A. Yes, sir.

22 Q. We are almost through the documents.

23 This is "Advantage Tank Lines'  
24 responses to plaintiff's request for admissions."  
25 You reviewed and considered these in your opinion.

1 A. Yes, sir.

2 Q. Then here we have the bill of lading  
3 and documents related to the load. Did you review  
4 and consider these documents in the formulation of  
5 your opinion?

6 A. I did.

7 Q. There is a customer service history  
8 on the vehicle owned by Susan Rawlinitis. Did you  
9 review and consider these documents in the  
10 formulation of your opinions?

11 A. It was just a real cursory -- a  
12 cursory review.

13 Q. Daily log reports from Kenan  
14 Transport, did you review and consider these?

15 A. I did.

16 Q. We have some documents here dated  
17 August 4, 2011, Charleston Auto Towing, to repair  
18 the rear-end damage. Did you review and consider  
19 these documents in formulating your opinion?

20 A. Yes. This is the one that I was  
21 looking for before in this plethora of documents  
22 laying around here. It says --

23 Q. I just asked if you reviewed and  
24 considered it.

25 A. Okay. I sure did.

1 I'll hold on to this if you don't  
2 mind.

3 Q. Certainly.

4 A. Okay.

5 Q. This is the driver's qualification  
6 file, which I believe was contained in some other  
7 documents. You said you did review and look at  
8 this?

9 A. Yes, I did.

10 Q. These are the cell phone records that  
11 were provided to Tammy for Reginald and Roger. Did  
12 you review and consider these?

13 A. Yes. But, there is some concerns on  
14 that.

15 Q. We are going to get this "Yes" or  
16 "No" thing down. I know it.

17 Finally, we have "Supplemental Rule  
18 26(a)(2)(B) disclosures and supplemental rebuttal  
19 Rule 26(a)(2)(B) disclosures." Did you review and  
20 consider these in the formulation of your opinion?

21 A. Yes, sir.

22 Q. That takes us through the entirety of  
23 your file. Are there any documents that you  
24 reviewed and considered that are outside of the  
25 documents that we have just looked over today?

1           A.           At the best of my knowledge at this  
2     time, no.

3           Q.           Well if there were any other  
4     documents, what documents would those be that you  
5     looked at, and reviewed, and considered in the  
6     formulation of your opinions?

7           A.           That's why I said to the best of my  
8     knowledge. I don't believe there's anything else.

9           Q.           If you think of anything else that  
10    you have looked at or reviewed that was helpful to  
11    you or that you utilized, please let counsel know.  
12    She can let me know.

13          A.           Sure.

14          Q.           When were you retained by plaintiff  
15    to do your analysis of this accident?

16          A.           October 21, 2013.

17                       There is one document you did miss,  
18    which is the retainer agreement.

19          Q.           I don't need to see that.

20                       MS. RAINES: You didn't rely on that,  
21    did you, in formulating your opinions?

22                       THE WITNESS: No. No.

23          Q.           What was the scope of what you were  
24    retained to do with respect to this accident?

25          A.           Make a determination as to Mr.

1 Yelverton's involvement in the crash, what he could  
2 have or could not have done in order to avoid the  
3 crash.

4 Q. Were you asked, at that time, to do  
5 any analysis with respect to the actions or  
6 inactions of Ms. Hartung?

7 A. Not necessarily. No. It was here's  
8 a crash, here's what happened, we'd like to retain  
9 you as a commercial motor vehicle expert to make a  
10 determination what Mr. Yelverton did or did not do.

11 Q. Would you agree with me, when there  
12 is a two vehicle crash, it's often times protocol to  
13 consider the actions or inactions of both drivers  
14 when coming to an opinion with respect to who was at  
15 fault?

16 MS. RAINES: Objection to form.

17 Q. I'm talking in general.

18 A. I do agree. That's the reason that I  
19 put it down in my first opinion in my report, as to  
20 Ms. Hartung's -- considering Ms. Hartung, where it  
21 says, again, the first opinion, "Katherine Hartung  
22 has a reasonable expectation to be able to travel  
23 Interstate 77 in normal driving conditions and there  
24 not being a CMV stopped in the travel lane without  
25 any degree of warning. Failure to warn and the mere

1 fact of the CMV's stopped presence were contributing  
2 factors to the crash that occurred causing injury to  
3 Katherine Hartung."

4 Q. When you say "failure to warn," what  
5 do you specifically mean there? Emergency flashers?

6 A. I -- failure to warn would've been --  
7 first off, it's hard to really explain failure to  
8 warn when you stop your commercial motor vehicle in  
9 the middle of a highway. If it were as a result of  
10 an initial collision, that's a totally different  
11 scenario. But, had he pulled his commercial motor  
12 vehicle off to the side of the roadway on to the  
13 improved shoulder, put out -- put his four-way  
14 flashers on immediately and put out his triangles,  
15 there's three triangles as required by the  
16 regulation, then that would've been appropriate  
17 warning of his vehicle being on the shoulder as a  
18 potential hazard.

19 Q. Understanding how this crash  
20 happened, do you think Mr. Yelverton would have had  
21 time to pull off to the side of the road, put his  
22 flashers on, and put his triangles out before Ms.  
23 Hartung got to the scene of the accident?

24 A. No.

25 But, if you look at -- if you look at



1 the ETOG data going at the point of what I have, and  
2 you will receive a copy of this, at 9.55.15, I  
3 believe that's where he started experiencing  
4 problems. That's likely where the seals blew out on  
5 his turbo. That's not necessarily gonna be --  
6 necessarily, I emphasize, the pop sound that he  
7 heard. I believe that's where the turbo began to  
8 fail.

9 Then you can see where he decreases  
10 in rpms and also speed, miles per hour. And it  
11 continues then. It fluctuates up and down up until  
12 the point of 9.59.45. Then it just deteriorates  
13 from that point on out.

14 So, that 45 seconds there, from  
15 9.59.45 to almost 10.00.45, he should have had --  
16 it's about 45 seconds -- actually, excuse me.  
17 10.00.30, he should have taken his commercial motor  
18 vehicle off the highway. He had 45 seconds to do  
19 that. So, from traveling at a speed of 50 miles an  
20 hour -- nearly 50 miles an hour, he certainly  
21 could've gotten his truck off to the side of the  
22 roadway and on to the shoulder.

23 Q. At what point did you say that the  
24 seals on his turbo probably blew out?

25 A. They probably actually blew out at

1 about the mark of 9.59.45.

2 Q. Which would've been how many seconds?

3 A. 45 seconds.

4 But a turbo is not going to go from  
5 full working mode to blowing out mode in a matter of  
6 seconds. There is going to be a degree of failure  
7 in between there. So --

8 Q. What knowledge are you basing that  
9 opinion on?

10 A. Experience of trucks. Dealing with  
11 trucks for 20 plus years. 25 years.

12 Q. Are you a mechanical expert?

13 MS. RAINES: Objection. Asked and  
14 answered.

15 A. No. FMCSA. In dealing with turbos,  
16 I've dealt with turbos on my own. You know. I've  
17 dealt with blown up turbos.

18 Q. Did you inspect this truck?

19 A. No, sir.

20 This is all based on information that  
21 was provided to me. 'Cause the truck -- it really  
22 would've been -- it would've been a pointless  
23 inspection because you're talking a couple years  
24 later. The truck had been in service after this  
25 crash. So, any evidence that I would've ascertained

1 from inspecting that truck would've been useless.

2 Q. So it is your belief that the turbo  
3 -- the pop was 45 seconds prior to the accident and  
4 at that point in time, the tractor trailer  
5 precipitously lost speed?

6 A. Possibly. Very possibly 45 seconds  
7 prior to that.

8 Q. Possibly?

9 A. Very possibly.  
10 But, somewhere definitely within the  
11 five minutes. But, likely at that 45 second mark  
12 prior to the crash is when he actually blew the  
13 turbo out. Complete failure.

14 Q. In your opinion, does that comport  
15 with Ms. Hartung's testimony as to how the accident  
16 occurred?

17 A. Well, Ms. Hartung knew nothing about  
18 the pop sound or about the turbo --

19 Q. I am talking about the speed of the  
20 tractor trailer.

21 A. Well, I'm basing this on -- not Ms.  
22 Hartung's testimony. I'm not basing that on Ms.  
23 Hartung's testimony. I'm basing it on the ETOG,  
24 which is factual information, rather than what Ms.  
25 Hartung, who is trailing behind the vehicle at 65

1 miles an hour, a distance back -- what her testimony  
2 is. 'Cause it's perception rather than fact here.

3 Q. Are you saying Ms. Hartung's  
4 testimony isn't factual information?

5 MS. RAINES: Object to the form of  
6 the question.

7 A. No.

8 Ms. Hartung -- as I said, Ms.  
9 Hartung's testimony, I'm going to take Ms. -- Mrs.  
10 Hartung is back a thousand feet or whatever that  
11 distance is prior to her, you know, seeing vehicles  
12 that are up ahead of her. So, if that's a thousand  
13 feet, 500 feet, 1500 feet, I don't have an exact  
14 answer for you at this point in time.

15 But, this information here, the ETOG,  
16 is factual. This is information that's sent to the  
17 desktop at the corporate office of Kenan. And  
18 they're able to monitor this. They're able to look  
19 at this. This information is factual to me as far  
20 as speeds are concerned.

21 Whatever Ms. Hartung says that the  
22 truck was doing, 55 miles an hour, I'm gonna take  
23 this fact here over her opinion any day.

24 Q. At 45 seconds, how far -- the 45  
25 seconds when you are saying that it is possible that

1 the turbo failed, how far away from the back of the  
2 tanker would Ms. Hartung's vehicle have been?

3 MS. RAINES: Object to the form.

4 A. At 45 seconds?

5 Q. Yes.

6 A. I -- let's see. You know, I don't  
7 have an exact -- I don't have calculations for that.

8 Q. Why don't we back it up?

9 She is going 65 miles an hour.

10 A. Right.

11 Q. How many feet per second is she  
12 traveling?

13 A. 95.

14 Q. It is your testimony that the turbo  
15 failed at 45 seconds prior to the crash?

16 A. Again, I said -- what I said is that  
17 at --

18 Q. We are doing math.

19 A. Excuse me.

20 It's somewhere in 45 seconds. It  
21 could've been -- it could've been all the way as far  
22 back as five minutes. But, likely, it started to  
23 come apart. In other words, it started to fail five  
24 minutes prior and then you have -- you have -- the  
25 total failure was about 45 seconds prior. It

1     could've been earlier than that. There's nothing --  
2     it -- the failure is not going to happen -- it's not  
3     going to be an absolute failure all of a sudden.  
4     It's going to be over a period of minutes. And it  
5     could even be up to a period of hours before this  
6     actually fails. Total failure that is.

7             Q.           You have testified that at 45  
8     seconds, the speed of the tractor trailer  
9     precipitously dropped. Yes or no?

10            A.           It did. Down to zero miles per hour.

11            Q.           Would it not be important to your  
12     analysis to know where Ms. Hartung was in relation  
13     to the tractor trailer at that point, 45 seconds  
14     prior to the accident?

15            A.           Again, my analysis was dealing with  
16     the commercial motor vehicle. That was my primary  
17     analysis.

18            Q.           At 65 miles an hour, Ms. Hartung  
19     would be traveling 95 feet per second?

20            A.           At 65 miles per hour. That's  
21     correct.

22            Q.           So at 45 seconds prior to the  
23     accident, that puts her 256,500 feet behind to the  
24     accident, according to my math. Does that sound  
25     correct?

1 MS. RAINES: Object to form.

2 A. I don't have a calculator with me  
3 today.

4 Q. Did you bring one with you?

5 A. I have a cell phone calculator.

6 Q. Okay. Get it out.

7 A. Okay. What was your input?

8 Q. You said at 95 feet per second -- at  
9 65 miles an hour, she is traveling 95 feet per  
10 second. So when the tractor trailer's speed  
11 precipitously dropped at 45 seconds, how many feet  
12 was Ms. Hartung behind --

13 A. 4,275.

14 Q. Walk me through that equation.

15 A. 95 feet per second, all right, at 45  
16 seconds is 4,275 feet.

17 Q. She would've been 4,275 feet from the  
18 point of the accident when the tractor trailer's  
19 speed precipitously dropped 45 seconds prior to the  
20 accident as you testified. Yes or no?

21 MS. RAINES: Object to the form.

22 A. Repeat that again? I'm sorry. I was  
23 looking for something.

24 Q. She would've been 4,275 feet from the  
25 point of the accident -- when the tractor trailer's

1 speed precipitously dropped 45 seconds prior to the  
2 accident, according to your testimony?

3 MS. RAINES: Objection.

4 A. Yes.

5 But, she would've been also been at  
6 that point there, too, she would've been out of  
7 sight -- that truck would've been out of sight based  
8 on my inspection of the site. She would not have  
9 seen the truck at that distance. Because you do  
10 have -- you do have some minor blinds up there, as  
11 well as you do have some small -- slight -- as a  
12 matter of fact, just after Exit 106, I believe it's  
13 106, which is the exit just prior to the crash  
14 point. Just prior to that crash point, there is a  
15 -- there's an elevation, and then it levels out, and  
16 then it starts to rise again and that's where the  
17 crash occurred. So, she would've had no more than a  
18 quarter mile, maybe -- maybe a half a mile of visual  
19 on that commercial motor vehicle -- on that truck.

20 Q. I think there was some testimony  
21 earlier, you said 400 to 500 feet would be the  
22 looming threshold?

23 A. Yes.

24 Q. So you were retained on October 21st  
25 of 2013?



1 A. That's correct.

2 Q. When did you go and do an actual  
3 scene inspection?

4 A. January 24th of 2014. On a nice,  
5 snowy afternoon.

6 Q. I saw that from your photographs.  
7 Did you take into consideration --  
8 what time did you do your inspection?

9 A. It was around 4 p.m.

10 Q. Were the conditions that were present  
11 at that time the same as they would have been on  
12 June 29, 2011?

13 A. No. Because of the fact that you  
14 have southbound traffic going into Charleston, which  
15 would be likely much more considerable than what I  
16 was seeing in all likelihood. There was still a  
17 relatively significant amount of traffic. A lot of  
18 tractor trailer traffic.

19 Q. Did you ever look into whether this  
20 particular roadway had been altered in any way,  
21 shape, or form from June 29, 2011 to the point that  
22 you did your inspection and then ultimately rendered  
23 your opinions in this accident?

24 A. No. I didn't look in to it. But, it  
25 appeared that it would've been -- it's -- I come

1 from a background of highway construction many years  
2 ago. And this looks like it has not been overlaid  
3 or anything to that effect in some time.

4 Q. How about the shoulder?

5 A. The shoulder does not look improved  
6 either. And also comparing that with the  
7 photographs you have, exterior rumble strips, you  
8 know, things of that nature, that tell me that it's  
9 the original condition that it was at the time of  
10 the crash, less the snow.

11 Q. Did anyone participate in the  
12 inspection with you, other than yourself?

13 A. No. Just me.

14 Q. You said that there was snow on the  
15 road that day?

16 A. It was -- it was plowed off. It was  
17 not affecting my judgment in any way, shape, or  
18 form. I mean, there was -- it was on the shoulder  
19 -- beyond the improved shoulder on the soft  
20 shoulder, if you will.

21 Q. What is "the soft shoulder"? Just  
22 explain that to me.

23 A. That's dirt. It's also called turf  
24 repair area, turf repair strip.

25 That had some snow on it. But, it's

1 -- it wasn't significant.

2 Q. Did you take any notes at the  
3 inspection?

4 A. I did.

5 Q. Those are the notes that you brought  
6 with you today?

7 A. Yes, sir. These two sheets here.

8 Q. Two take any measurements while you  
9 were on scene?

10 A. I did.

11 Q. Are those measurements depicted in  
12 those pages of notes that we have here?

13 A. They are.

14 They're typical of an interstate  
15 system of the Eisenhower interstate system. The  
16 shoulders -- the improved shoulders, 11 foot wide,  
17 the two travel lanes southbound are both 11 foot  
18 wide with skid marks and a yellow fog line to the  
19 left and a white fog line to the right, and outside  
20 the white fog line on the right was rumble strips.  
21 Mr. Rickard had said that they're 12 feet lanes.  
22 They're not. They're 11 foot lanes travel space.  
23 And there was guardrail at a certain point where the  
24 depression is where the tractor trailer came to  
25 rest. No guardrail, earth and berm, where the

1 crashed occurred.

2 Q. Did you take any photographs while  
3 you were doing your inspection?

4 A. I did.

5 Q. Did you bring those with you today?

6 A. I sure did.

7 MR. MONTGOMERY: Do we have these?

8 MS. RAINES: I don't have those, for  
9 the record.

10 Is that a CD?

11 THE WITNESS: It's a ThumbDrive.

12 MR. MONTGOMERY: You can give those  
13 to me.

14 MS. RAINES: Is this your original?

15 THE WITNESS: No. I've got them on  
16 the computer.

17 Q. What did you photograph in  
18 particular?

19 A. Essentially, I took pictures of where  
20 the crash site would approximately have been. I  
21 took photographs of the encroachment on to the crash  
22 site. Looking back at the crash site, behind -- in  
23 other words, where the crash site is, took 180  
24 degrees photographs of -- again, the approximate  
25 crash site. I don't have the exact location. But,

1 it's within 10, 15 feet either way.

2 Q. When you say you have the exact  
3 location, why were you unable to determine the exact  
4 location of the crash?

5 A. Well, with any degree of certainty, I  
6 mean, being able to make an absolute declaration  
7 that this is the location where the crash occurred,  
8 it's kind of difficult because you have a rolling  
9 crash. You don't know specifically. I cannot say  
10 this is where the impact occurred. Now if it had  
11 occurred and I was able to look at the scrape marks  
12 and so forth that you see in the photographs from  
13 the State Police, yeah. Sure you could get  
14 accurate. But as far as any evidence that really  
15 tells me exactly where -- I mean, I saw some gouge  
16 marks and so forth. But, I don't know if they were  
17 exactly from this crash. They were minor gouge  
18 marks.

19 Q. So you did see gouge marks at the  
20 scene but you didn't use them as the location of  
21 this crash?

22 A. No. Because I couldn't determine,  
23 with any degree of certainty, that that was from  
24 this crash.

25 Q. Have you ever rendered any testimony

1 in any matter where there was a tractor trailer that  
2 was parked on the side of the road that was struck  
3 by another vehicle?

4 A. You know what? I -- I'm sure I have.  
5 I'm just not -- I'd have to look into that for you.  
6 I'm sure that I have. I just don't remember  
7 specifics. But, I would have to look into that.

8 Q. Did you find fault with the tractor  
9 trailer driver in those cases?

10 A. Again, if I don't recall the  
11 specifics, you know, I don't recall the specifics.

12 I -- I want to say that I have  
13 rendered opinions on trucks on shoulders.  
14 Specifics, I don't -- I don't recall. I don't  
15 recall the specific cases, I don't recall the  
16 specifics of any event.

17 Q. Would any of those cases be listed --

18 A. Let me see the year when it started  
19 actually.

20 Q. I think it goes back three years.

21 A. I think that's what Rule 26 requires  
22 me to demonstrate.

23 No. This actually goes back from day  
24 one. Yeah. 2009. So -- yeah.

25 But, I couldn't tell you, offhand, if

1 any of them were shoulder related. Because  
2 sometimes I get a phone call and somebody says would  
3 you -- you know, from a defense standpoint, as I was  
4 telling you earlier on, somebody calls and also said  
5 that they would like -- you know, an attorney calls  
6 and they would like me to represent them from a  
7 defense standpoint -- oh actually, yes. I do. I do  
8 have -- I just recalled one. It is up in Boston.  
9 Paul Zerola. Z-e-r-o-l-a.

10 I'm writing on here "Shoulder crash."

11 Q. Who do you represent in that case for  
12 Paul Zerola? The plaintiff or the defendant?

13 A. Plaintiff.

14 Q. This was involving an improved  
15 shoulder?

16 A. Yes.

17 Q. That is similar to the shoulder we  
18 have in this case?

19 A. It was an interstate. So, I have not  
20 yet gotten a chance to get up there and inspect that  
21 shoulder and I do anticipate doing that. So, it is  
22 -- it is an improved shoulder and there was a car  
23 that ran in to the back of the -- in to the -- I'm  
24 representing the passenger of the car.

25 Q. You are representing a plaintiff in a

1 case where a tractor trailer had pulled off the road  
2 and you are finding fault with the tractor trailer  
3 driver that pulled off the road?

4 A. It was a straight job. It was a  
5 straight job truck. Yeah.

6 Q. Yes?

7 A. Yes.

8 That's the first time you had to  
9 correct me on that, too.

10 Q. In that case, if you don't mind, what  
11 is the basis of your opinion?

12 A. Well, I -- it's an open case, it's an  
13 open matter. So, I don't know how much I'm at  
14 liberty to discuss without speaking to counsel. So,  
15 I'd rather not, without speaking to counsel.

16 Q. It is probably better we talk about  
17 it now than on the stand. That is your call.

18 MR. MONTGOMERY: Off the record.

19 (Discussion held off the record.)

20 Q. Prior to going off the record, we  
21 were talking about the case where you rendered an  
22 opinion in favor of the plaintiff that resulted from  
23 a tractor trailer accident where I believe a motor  
24 vehicle collided with a truck that was parked on the  
25 improved shoulder. Correct?



1           A.           That's correct.

2           Q.           I don't want to know the specific  
3 details of the case. There was some question as to  
4 whether you have actually authored a report or not  
5 in that matter. What exactly did the tractor  
6 trailer driver do wrong in that situation?

7                       First of all, was this a mechanical  
8 breakdown situation?

9           A.           No. It was a mechanical maintenance  
10 situation.

11          Q.           What is the difference?

12          A.           He had the reburn on his -- for the  
13 diesel fuel particulate filter reburn. It kicks on  
14 at a certain point and tells you you have to --  
15 you've got to do certain things with the truck.  
16 But, you have a period of I can't remember how many  
17 miles it is before you have to do this quick  
18 service. And the service essentially is pulling  
19 over to the side of the road -- not the side of the  
20 road. In a safe harbor, safe refuge, and allowing  
21 the vehicle to regen itself. Okay? This guy, who  
22 wasn't trained properly, the light went off and he  
23 immediately pulled his truck off the side of the  
24 road at 2 o'clock in the morning and didn't put out  
25 any of his required warning devices. And low and

1 behold -- and it was a straight job truck. Another  
2 vehicle crashed in to the back end.

3 Q. So you found fault with the driver of  
4 that truck for pulling his vehicle on the side of  
5 the road in the situation you just described? Yes  
6 or no?

7 A. I find fault that he did not have to  
8 pull that vehicle over to the side of the road. He  
9 had up to 50 miles and a multitude of exits that he  
10 could have taken that vehicle off the side of the  
11 road and allowed that service -- that regen service  
12 to take place.

13 Q. I'll ask the question again.  
14 In the situation that you just  
15 described, you found fault with that driver for  
16 pulling his vehicle on to the side of the road? Yes  
17 or no?

18 MS. RAINES: Objection. Asked and  
19 answered.

20 MR. MONTGOMERY: He didn't answer.

21 A. The answer is yes. But, there's also  
22 a follow up with that, too.

23 Q. I appreciate that.

24 A. Is that the driver pulled his vehicle  
25 over to the side of the road when he shouldn't have.

1 He should have taken it to an exit up the road where  
2 he could've safely gone to an area and allowed his  
3 particulate filter to regen itself.

4 Q. Is that because this truck was still  
5 moving? Still operational?

6 A. No. It was primarily lack of  
7 training. That he should have been trained  
8 accordingly. And he was not.

9 Q. In that situation, he should not have  
10 pulled off the road and in this situation, Mr.  
11 Yelverton should have?

12 MS. RAINES: Objection to form.

13 A. That's not a yes or no.

14 Q. Yes or no? That's the opinion?

15 A. This -- the particular case in  
16 Boston, the driver should not have pulled his truck  
17 on to the shoulder because the truck was still  
18 operational for up to I believe it was either 45 or  
19 95 miles. He had another -- a considerable amount  
20 of mileage to go before his vehicle would shutdown  
21 on him. And it's just a maintenance part. So,  
22 instead of finding a spot like a truck stop or  
23 something to that effect and doing the regen  
24 process, what he did is as soon as the light went  
25 off on the truck, he immediately pulled his truck

1 over to the roadside. All right? Which is not  
2 correct. Because it's a breakdown lane. All right?  
3 It's considered by some to be a breakdown lane.  
4 It's not a place to go and set up your truck and do  
5 maintenance on your vehicle. I mean, who's gonna  
6 pull over and do an oil change on your truck because  
7 your mileage hits another 5,000 miles on a roadside?  
8 You take it to a place where it's gonna be  
9 appropriate. He had time to do that and he didn't  
10 do that.

11 In Mr. Yelverton's case, Mr.  
12 Yelverton had at least 45 seconds, actually up to  
13 five minutes, to make a determination that my truck  
14 is malfunctioning, there's something wrong with my  
15 vehicle, I'm an experienced commercial motor vehicle  
16 so I better get my truck off the road -- off the  
17 highway. And he had opportunity to do that at Exit  
18 106 and he didn't. Then after Exit 106, he had  
19 opportunity to take it to the shoulder and he didn't  
20 because he said he was concerned about driving off a  
21 mountain.

22 Q. In the future, I'll be more careful  
23 about giving you yes or no questions that allow a  
24 platform on which to pontificate concerning that  
25 case, this case. I was to get a more simple out of

1     you. I'll try a different method.

2             A.         It's understood. But, it's not that  
3     simple.

4                     MR. MONTGOMERY: Off the record.

5                     (Discussion held off the record.)

6             Q.         Did you make any determinations in  
7     this matter with respect to the point of impact on  
8     the Hartung vehicle?

9             A.         Looking at it, I could -- I can -- I  
10    certainly can discern that it appeared that you  
11    can't just take Hartung's vehicle. You have to take  
12    both vehicles in this situation.

13            Q.         I'm asking about the Hartung vehicle.  
14    Work with me here.

15                    THE WITNESS: I hope you're recording  
16    down the laughing part.

17            A.         You could see that the -- on the  
18    Hartung vehicle, it appears that the primary impact  
19    was on the right-hand side, the passenger's side, of  
20    her vehicle.

21            Q.         Would that indicate that at some  
22    point, she did perceive that a collision was  
23    imminent?

24            A.         In my mind, yes.

25            Q.         Did you determine where the point of

1 impact was on the Kenan Transport tanker?

2 A. On driver's side bumper. On the --  
3 on his DOT bumper on the back.

4 Q. Again, that is consistent with Ms.  
5 Hartung, at some point, realizing that she was going  
6 to crash in to the back and trying to steer left?

7 A. It is. It is.

8 Or I'll just say yes.

9 Q. Do you recall if the West Virginia  
10 police report had any information with respect to  
11 the point of impact?

12 A. I believe it did. And it shows the  
13 vehicles, where they -- with the -- Yelverton's  
14 vehicle on the shoulder post crash and it shows Ms.  
15 Hartung's vehicle straddled over the skip lines on  
16 the southbound lanes.

17 Q. Let me ask you this. In your  
18 inspection, did you see any tire marks or any  
19 markings on the roadway that would be indicative of  
20 an evasive maneuver on the part of Ms. Hartung?

21 A. I don't think -- I don't think  
22 photographs allowed for that analysis.

23 Q. Was there any mention of that in the  
24 police report?

25 A. No, sir. I don't believe so.

1           Q.           So you have no evidence that there  
2     were any road markings or anything like that that  
3     showed an evasive maneuver on the part of Ms.  
4     Hartung?

5           A.           Well, I can only base it on the  
6     photographs because of the fact that obviously all  
7     that evidence would've been gone by the time I got  
8     out there to do my inspection this past January.  
9     But, based on the photographs, I mean, there's some  
10    degree of tire marks where you could see where her  
11    car -- upon impact where you could see the front  
12    right tire kind of took a dive down and it made an  
13    impression on the roadway. But, other than that,  
14    there is no other pictures that are available that I  
15    can confidently say that there was or there wasn't.  
16    I just don't have that information.

17          Q.           If you had seen any evidence in a  
18    photograph or during your visit, you would have --  
19    your scene visit, you would have noted that in your  
20    report. And that is any evidence of an evasive  
21    maneuver.

22                   MS. RAINES: I am going to object to  
23    the form. Are we still talking at the Hartung  
24    vehicle? Just to be clear.

25                   MR. MONTGOMERY: We're talking about

1 the roadway now.

2 A. Well, you could see in the  
3 photographs, there's one photograph that shows  
4 probably the most clear point of impact where you  
5 could see leading -- where it was actually the tire  
6 marks from -- the tire marks from Yelverton's  
7 commercial motor vehicle after the crash. It was  
8 post crash. Prior to that, there was nothing that I  
9 can point to to specifically say that it was -- that  
10 shows Ms. Hartung's skid marks or something to that  
11 effect.

12 Q. Have you personally ever spoken to  
13 Ms. Hartung?

14 A. No, sir.

15 Q. The only information with respect to  
16 how the crash happened is her deposition testimony  
17 and perhaps some of her answers to the written  
18 discovery in this matter?

19 A. Well, it's a plethora of things that  
20 you put together. You put together, you know, the  
21 ETOG data, her testimony, Yelverton's testimony,  
22 State Police reports, and so forth to come up with a  
23 conclusion. It's -- you know. It's not just one  
24 document.

25 Q. Did you measure the improved shoulder



1 -- how did you determine what part of the improved  
2 shoulder to measure whenever you came up with the  
3 measurement for the improved shoulder?

4 A. It would come from the turf strip,  
5 which is the soft shoulder. So, the dirt, if you  
6 will. Out to the -- real technical term. Out to  
7 the right-hand fog line. The outside part of the  
8 right-hand fog line just beyond the rumble strips.

9 Q. Is that uniform on I77 South?

10 A. It's -- it's, pretty much, uniform as  
11 far as I know throughout the interstate system.

12 Q. Did you take any photographs of other  
13 areas as you approached the scene of the accident  
14 showing that it's uniform?

15 A. No. But, I've done enough work on  
16 the interstate system over the years to know that  
17 it's relatively close to uniform. 11 foot wide  
18 lanes. But, that's just travel portion. Did I  
19 answer your question? I apologize.

20 Q. I am talking about the improved  
21 portion. You give an opinion at some point --

22 A. The improved shoulder?

23 Q. -- the improved shoulder is 11 feet  
24 wide.

25 A. Right.

1 Q. Is that uniform on I77 heading  
2 southbound?

3 A. Well, I didn't get out and measure  
4 every, you know, quarter mile or what have you.  
5 But, observation would say that yes, it's relatively  
6 standard.

7 Q. When you say "relatively standard" --

8 A. 11 foot. It could be 11 foot, 4  
9 inches or 10 foot, 9 inches.

10 And I know that under -- under  
11 construction -- heavy highway construction  
12 regulations, that the placement of this -- the state  
13 and the federal government are gonna get their  
14 money's worth. So, if it's an 11 foot section  
15 highway, they want an 11 foot section improved  
16 shoulder, they want 11 foot of asphalt. If it's 10  
17 foot, they're gonna want 10 foot.

18 Q. Did you look at the specifications  
19 for the dimensions as far as the design and  
20 construction of this highway?

21 A. No. But, I'm very familiar with  
22 that. Because I come from a highway building  
23 background many years ago, as you see on my CV.

24 Q. Can that vary from state to state,  
25 place to place?

1           A.           It's somewhat typical. If you  
2   measure the improved shoulder in Jacksonville, you  
3   might wind up with 11 foot. If you're in Jersey,  
4   you're gonna wind up with 11 foot. Of course on the  
5   New Jersey Turnpike, it's wider. You know. Getting  
6   down on Interstate 40 in Tennessee, I believe it's  
7   11 foot. So, it really depends.

8                   Also, there's variables, too. You  
9   have some areas that are wider than others. But,  
10   the relative norm is 11 foot.

11          Q.          I guess my question is, do you have  
12   any evidence that the improved shoulder was 11 foot  
13   in width in the five miles or six miles leading up  
14   to the scene of this crash?

15          A.          It appeared to be. Again, I did not  
16   get out and measure, you know, five miles' worth of  
17   shoulder by quarter mile increments or what have  
18   you. But, it appeared that the majority of it was  
19   11 foot.

20          Q.          You are basing that on your  
21   perception --

22          A.          That's correct.

23          Q.          -- as you drove down the highway?

24          A.          That's correct.

25                   And most important I think is the

1 shoulder -- the improved shoulder coming up to 106  
2 and just beyond 106. And I believe that I'm getting  
3 that exit correct. Bear with me one second here.  
4 I'm pretty sure it is. Yeah. 106, which is Edens  
5 Fork exit. So, Edens Fork exit.

6 So, most specifically right after  
7 106, you have the 11 foot shoulders. And that was  
8 the opportunity. Since he didn't take the exit,  
9 knowing that he had a problem with his commercial  
10 motor vehicle -- since he didn't take 106 as a place  
11 of safe refuge, he still had a shoulder -- 11 foot  
12 shoulder going after Edens Fork. But, there was  
13 also --

14 Q. Based on your interpretation of the  
15 five minutes of him having trouble, et cetera, et  
16 cetera, I understand.

17 Did you take a measurement of the  
18 grade at or near the point of the accident?

19 A. Approximate. Yes.

20 Q. Did you use a tool to measure the  
21 grade or --

22 A. I did.

23 Q. What kind of tool was that?

24 A. A protractor.

25 Q. How would you go about doing that? I

1 wasn't the greatest in math. How would you measure  
2 the grade of a road?

3 A. It just gives -- it gives you grades  
4 and percentages of -- you know, percentages of  
5 grade.

6 Q. Is it an electronic one?

7 A. No. It's manual.

8 And then I also have a level, too,  
9 that you set down on an angle just to confirm it and  
10 that level that sits on an angle tells you -- that's  
11 electronic. It tells you exactly what the  
12 percentage of grade is.

13 Q. Did you just measure the grade in the  
14 area of the accident or -- let's say for instance  
15 what the grade of the road is a mile back?

16 A. No. I -- I did it starting at mile  
17 marker 110, which is a half percent.

18 And then at 109 was a one and a half  
19 percent upgrade.

20 108.5 was a half percent downgrade.

21 108 was one and a half percent  
22 downgrade.

23 107, one and a half percent upgrade.

24 Edens Fork, no. I didn't have Edens  
25 Fork.

1 And then crash location was  
2 approximately 2 percent.

3 And these are all rough dependent  
4 upon where you take the actual measurement. It's  
5 just so much as a simple stone getting underneath  
6 that's sticking up out of the bituminous asphalt.  
7 Surface can affect that slightly.

8 Q. I am confused. In your report, you  
9 say that the area at or near the crash was 4  
10 percent. You just said 2 percent.

11 A. No. I didn't say 4 percent.

12 Q. Page three, paragraph three. If you  
13 could take a quick look at that. Would you read the  
14 second sentence there in paragraph three?

15 A. Yeah. Yeah. I did say 4 percent. I  
16 don't know -- crash location -- I had it down on my  
17 field notes here as 2 percent. Is it a typo? I  
18 don't know. My field notes say right here, "Crash  
19 location, 2 percent."

20 So, I don't know how that -- I don't  
21 know how -- that is a typographical error. Had to  
22 be. Because I would've taken it right -- I don't  
23 know where I picked this up from. But, here on my  
24 field notes, you could see, right here, "Crash  
25 location, 2 percent." I don't know how I made that

1 error.

2 Q. Does the difference between 2 or 4  
3 percent affect the conclusions that you have reached  
4 in this matter?

5 A. No. No. It wouldn't affect it at  
6 all. Especially because of the fact that he's  
7 coming off a relative stepped up flat surface right  
8 by Edens Fork there. Watching other tractor  
9 trailers, too, they were consistently at, you know,  
10 50 mile an hour, 40 mile an hour coming up that  
11 grade?

12 Q. If you want to get your report out,  
13 we are getting to the meat-and-potatoes here. We  
14 are moving along nicely.

15 On page three, you make the statement  
16 "Unable to avoid the CMV's cargo tank located in the  
17 right lane of travel. Hartung crashed into the rear  
18 bumper of same causing severe injury to Hartung."

19 Why was Hartung unable to avoid the  
20 rear of the commercial motor vehicle?

21 A. I think that it just -- the closing  
22 -- closing. It just closed in on her so quickly.

23 Q. You didn't do any perception-reaction  
24 analysis?

25 A. No. We covered that. No.

1 Q. Would that be something that you  
2 learned at the IPTM that you would need to do before  
3 rendering an opinion with respect to whether  
4 somebody had time to perceive and react and avoid  
5 something?

6 MS. RAINES: Object to the form.

7 A. Again, my opinions are based on the  
8 commercial motor vehicle. Predominantly the  
9 commercial motor vehicle operator's actions of what  
10 he did or did not do in compliance with the FMCSR.

11 Q. You made your statement in your  
12 report "Unable to avoid the CMV cargo tank located  
13 in right lane of travel. Hartung crashed into rear  
14 bumper of same causing severe injury to Hartung."

15 You are saying she was "Unable to  
16 avoid." I am saying what are you basing that on,  
17 scientific or otherwise? The fact that the crashed  
18 happened?

19 A. That's it. The fact that the crash  
20 occurred tells me in my mind that she was unable to  
21 avoid it. From the point at which she perceived it,  
22 reacted to it, she was unable to avoid the crash  
23 based on the simple fact of the crash.

24 Q. But you didn't do a  
25 perception-reaction analysis. So essentially what



1 you are saying is because an accident happened, it  
2 was the truck driver's fault?

3 MS. RAINES: Objection to form.  
4 Mischaracterization.

5 A. I think that parking a commercial  
6 motor vehicle on a highway and somebody striking it,  
7 would in my mind make it the fault of the commercial  
8 motor vehicle operator.

9 Q. You have also given the opinion that  
10 parking a motor vehicle on the side of the road also  
11 is the fault of the truck driver, as well.

12 A. Again, that is a totally different  
13 scenario. You can't -- it is a completely different  
14 scenario. We are talking about a breakdown versus a  
15 maintenance issue. So, it is totally irrelevant.  
16 This guy drove the straight job truck. He had a  
17 maintenance issue of up to -- and I don't recall  
18 whether it was 95 miles or something like that, that  
19 he could've maintained that issue very easily at a  
20 truck stop or a safe refuge off an off ramp. He had  
21 that opportunity. His commercial motor vehicle was  
22 mobile. This commercial motor vehicle here, after  
23 it passed 106, was definitely immobile after the  
24 turbo blew up and 45 seconds prior had a total loss  
25 of power.

1 Q. And you were retained by Paul Zerola  
2 in that case?

3 A. Yes, sir.

4 Q. Do you know who the defense attorney  
5 is?

6 A. No, I don't.

7 Q. Do you know where that case is filed?  
8 Is that information in there?

9 A. It's -- it should be in there I would  
10 think. I'm not sure of the venue.

11 Q. I will look at it later. I don't  
12 want to belabor it right this second. Obviously, we  
13 are going to look at that later. I think it's  
14 pretty pertinent to the situation that we are  
15 talking about today.

16 In the second -- on page three,  
17 second paragraph from the bottom, you say "While  
18 traveling on I77 in the right lane of travel,  
19 Hartung came upon the cargo tank CMV essentially  
20 stopped or near stopped in the right lane of travel  
21 on a moderate incline."

22 It doesn't make any difference to  
23 your analysis whether it was stopped or still  
24 moving?

25 A. Very little. I think that it's more

1 detrimental if he was stopped in my opinion. Based  
2 on the ETOG data, it appears to me that he was  
3 stopped. Five miles per hour, from an impact  
4 standpoint, is -- you're running into -- if you're  
5 running in to the back of a wall at 65 -- 55 or 50  
6 miles per hour versus five miles per hour -- excuse  
7 me zero miles per hour versus five miles per hour, I  
8 think the end result is gonna be relatively the same  
9 or very close to it.

10 Q. Specifically, do you have the ETOG  
11 data that you relied on in formulating the opinion  
12 that he was stopped?

13 A. Sure. Here you go right here. Right  
14 at the bottom right there. Zero miles per hour.  
15 This is five miles per hour here. The first  
16 increment up above that is five miles per hour.

17 Q. You have that happening after 10  
18 o'clock and 30 seconds. Correct?

19 A. Shortly thereafter.

20 Q. Do you know what time this accident  
21 occurred?

22 A. Exactly?

23 Q. Yes.

24 A. No. Nobody knows exactly what time  
25 it occurred. I'm looking at this here and seeing

1 what's happening with his rpms and with his miles  
2 per hour speed rate. Very clearly, it appears to me  
3 that he's going to total failure.

4 Q. Did you testify earlier that after  
5 the accident, he pulled his truck off the road?

6 A. He did.

7 Q. How was he able to do that if it was  
8 a total failure?

9 A. He was on his way to total failure.

10 Q. Why would he take it down to five  
11 miles an hour?

12 A. Because he was able to limp off the  
13 roadway at five miles per hour. Just enough to get  
14 it off the roadway.

15 Q. So your testimony is that he was on  
16 his way to total failure but was stopped on the  
17 roadway, but wasn't at total failure?

18 A. Was not completely at total failure  
19 but well on his way.

20 Q. So he would have been moving?

21 A. He was able to move enough to limp  
22 his truck off the roadway at five miles an hour  
23 which took him about 15 seconds.

24 Q. You testified that you believe at the  
25 point of the accident that he may've been completely

1 stopped. Why would he have been completely stopped  
2 at the point of the accident if he was able to drive  
3 his truck off the road?

4 A. The same reason that he probably  
5 didn't realize that he should have taken his truck  
6 off the road. Because he's not thinking clearly  
7 because he's on his cell phone, engaged in a  
8 conversation rather than thinking what he should be  
9 doing of getting his truck off the roadway.

10 Q. How do you know he was on his cell  
11 phone at the time of the accident?

12 A. It seems logical to me that he was --  
13 at the time of the actual collision, I don't know if  
14 he was, but sometime in this 45 seconds prior to it,  
15 I believe very well that he was, which took his  
16 attention away from the task at hand, which is  
17 getting his vehicle to a place of safe refuge.

18 Q. But you don't know exactly what time  
19 the accident happened?

20 A. No. I -- nobody knows exactly what  
21 time. It's estimated.

22 Q. What time is noted in the police  
23 report?

24 A. 10 o'clock.

25 Q. Was the truck, based on the ETOG data

1 that you are looking at right now, moving at 10  
2 o'clock?

3 A. It was physically moving at 10  
4 o'clock. At exactly 10 o'clock, it was at 20 miles  
5 per hour.

6 Q. At what point now did it go actually  
7 to zero?

8 A. Went down to zero at -- it would be  
9 about 10.00.47 I would say? No. Excuse me. Take  
10 that back. 10.00.40 maybe?

11 Q. Don't you think that that's more  
12 consistent with him stopping the truck after she  
13 rear-ended him?

14 A. No. Because he took his -- he  
15 immediately -- I believe that what happened is on  
16 that impact, all right, that impact, obviously you  
17 can see where it -- on that impact, you could see  
18 the truck moving forward. He comes forward, he  
19 pulls it up 15 -- at five miles an hour for 15  
20 seconds to limp it off the shoulder. So even -- but  
21 I guess the main point is -- that's why I left some  
22 latitude in the report. Whether he was doing a  
23 total of five miles per hour or zero miles per hour,  
24 five miles per hour is a speed that he should have  
25 removed his vehicle from the roadway. He should

1 have started coming off the roadway at 45 seconds --  
2 actually prior to that. Within that five minutes,  
3 he should've been looking for an exit.

4 Q. At that point, he would've been past  
5 any exits?

6 A. Not within the five minutes. At the  
7 45 seconds, he possibly would've been past Edens  
8 Fork. But, if he was thinking clearly, rather than  
9 being engaged in cell phone conversations, he  
10 would've been thinking at getting off at Exit 106  
11 rather than talking on his phone.

12 Q. Let's talk about that.  
13 In the 45 seconds when the speed  
14 precipitously drops, that's the term we coined  
15 today, where the speed drops, you think that's when  
16 he heard the pop.

17 A. I believe that it may have been.

18 Q. How far would he have traveled in  
19 those 45 seconds?

20 A. I have that broken down. Page six I  
21 think it is. Or seven. Here we go.

22 Page eight. Calculating the average  
23 speed for approximate 15 second increment is the  
24 following: The first 15 second increment is 42.5  
25 because you could see that slide is consistent.

1 Q. My question was about the 45 seconds.

2 A. Right. That's what I'm talking about  
3 here.

4 You could see, in that 45 seconds on  
5 the ETOG, that his speed slide is consistent.  
6 There's no fluctuations in that last 45 seconds.  
7 So, it's fair enough to be able to come up with an  
8 average for each 45 seconds in 15 second increments  
9 as to what that speed was. So, the average speed  
10 for the first 15 seconds of that 45 seconds is 62  
11 feet per second. All right? The second increment  
12 is 40 feet per second. Third increment is 7.5 feet  
13 per second. Okay?

14 Q. How many feet is that?

15 A. 540 yards.

16 Q. How many feet is that?

17 A. Which you take in five and a half  
18 football fields or convert it to 1,620 feet.

19 Q. He traveled 1,620 feet in that 45  
20 seconds?

21 A. Yes.

22 Q. How far away was the Edens Fork exit?

23 A. Edens Fork is sitting at 106. Exit  
24 106. Crash occurred at 105. -- 105.2.

25 Q. Four-fifths of a mile?



1 A. Hold on one second.

2 Okay. What was that?

3 Q. How far away was the Edens Fork exit  
4 from the -- how far away was Edens Fork exit from  
5 when he started experiencing the 45 seconds?

6 A. Well, it's -- an exact, you're not  
7 gonna have because the mile markers don't give  
8 exact. And I couldn't shut the highway down to  
9 measure all this.

10 Q. How far away was the Edens Fork exit  
11 as you have stated in your report?

12 A. I would say probably a quarter mile.  
13 Approximately.

14 Q. I have to go back to your report.  
15 You do say it was four-fifths of a mile away.

16 A. Four-fifths. All right. 5.5  
17 football fields was -- yeah. Four-fifths of a mile  
18 if we're looking at the -- and that's based on mile  
19 stickers -- mile markers.

20 Q. It is four-fifths of a mile from the  
21 accident scene. We did the calculation he traveled  
22 1,620 feet after he heard the pop in that 45  
23 seconds. Yes?

24 A. Right.

25 Q. So he would've been past the Edens

1 Fork exit, based on the math that you just gave me--

2 A. That's correct.

3 Q. -- when he heard the pop?

4 A. I'm not saying that he would not have  
5 been past it. The pop occurred after -- if the pop  
6 occurred at that 45 second mark, it would've been  
7 past Edens Fork.

8 Q. You render opinions in your report  
9 about pulling off at Edens Fork?

10 A. But, that's within that five minute  
11 period. It's not within that 45 second period.  
12 Within that five minutes, he knew that he had a  
13 problem. And he did not act on that problem.

14 Q. But he testified that he didn't know  
15 that he had a problem?

16 A. I'm an experienced truck driver.  
17 When you're driving that truck and you live in that  
18 truck every single day and you're driving over the  
19 road, you know when you have a problem. You know  
20 when the turbo's failing. You know when you have a  
21 flat tire. If you're driving along, you know you  
22 have the flat tire on the trailer.

23 Q. You weren't in this particular truck  
24 obviously.

25 A. No.

1 Q. Do you know whether this is the truck  
2 that Mr. Yelverton drove on a consistent basis?

3 A. I believe that was his first day in  
4 it, if I'm not mistaken.

5 But, the point is that you understand  
6 trucks. When you're driving a truck and you have  
7 been driving that truck for a day or what have you,  
8 you understand that vehicle. You get the feel of  
9 the vehicle.

10 Q. Once you drive a particular truck for  
11 a while, you start to get a feel for it?

12 A. Yeah. But, even still, if you're  
13 driving a truck for an eight hour shift --

14 Q. I just want to understand how it is  
15 that you are able to just conclude that he knew that  
16 there was a problem for five minutes based on --  
17 what are you basing that on?

18 A. Power. I mean, it's a power failure.  
19 You know if your truck is not responding. When  
20 you're stepping down on your throttle, you know your  
21 truck's not responding, there's something wrong.  
22 Whether it's water in the fuel or -- you know, or  
23 air filter situation. Whether it's -- it could be a  
24 whole host of different things. But, you get your  
25 truck off the road.

1           Q.           This particular area in the five  
2 minutes, would he have been going up and down hills  
3 in West Virginia?

4           A.           Sure. But, they -- the distance that  
5 I traveled, they were not real aggressive hills.  
6 They were moderate.

7           Q.           Would those hills be of a significant  
8 enough incline to affect the speed of a tractor  
9 trailer?

10          A.           Oh, sure. But, again, you would feel  
11 -- you would still feel your truck.

12          Q.           What basis are you rendering the  
13 opinion that five minutes and 15 seconds before the  
14 accident, he should have known that he was having  
15 trouble with his tractor trailer? You said power.  
16 What is it that you are looking to that says this is  
17 definitive, this is how I can make this opinion?

18          A.           Experience. Experience. And plenty  
19 of it. Experience of driving trucks, experience of  
20 owning trucks. You know when you're having a power  
21 failure in your vehicle.

22          Q.           But that is your experience. You  
23 weren't driving this truck.

24          A.           But, I have been retained as an  
25 expert -- as a commercial motor vehicle expert. So,

1 I think that I should be permitted to express my  
2 experience. I think that's what I'm retained for,  
3 in part.

4 Q. I am asking you, out of the  
5 information that you reviewed, that you were able to  
6 apply your experience as a truck driver to in order  
7 to formulate that opinion.

8 A. Right here. ETOG. The ETOG  
9 demonstrates to me that he -- he was feeling some  
10 degree of loss of power. And he should have felt  
11 it.

12 Q. The ETOG, does it not have  
13 fluctuations in speed from 45 miles an hour to 60  
14 miles an hour in this time period that you're  
15 talking about he should have known there is a  
16 problem?

17 A. Yeah.

18 Q. It does?

19 A. It does.

20 Q. You testified earlier that going up  
21 and down hills would affect the speed of this  
22 tractor trailer. How could you say there has to be  
23 a power problem?

24 A. Look at the time period before he  
25 started experiencing these problems. He maintained

1 the speed at 65 miles an hour in these hills. Okay?  
2 Then he gets to the point at 9.54.45 and starts  
3 seeing a decline in his power. So, in my mind, he  
4 was to have known.

5 Q. Are you equating a decline in speed  
6 with a decline in power?

7 A. Yeah.

8 If you also look at rpms, too.

9 Q. What is it about the rpms that  
10 indicates that there is a decline in power?

11 A. Right in here. You can see the  
12 fluctuation of the rpms. If you look here, on rpms  
13 -- where are the time frames here? Roughly 9.56.00,  
14 he has spikes in his rpms. I mean, it just shoots  
15 straight up. It goes from 1300 rpms, up to 1800  
16 rpms for no rhyme or reason, while at the same time,  
17 his power is declining going down. In other words,  
18 he's losing power.

19 Q. Would his rpms go up as he was  
20 climbing the hill or would they go down?

21 A. It depends. It all depends on what  
22 he was doing with his throttle. And it all depends  
23 on his load.

24 If you look at -- his rpm s are all  
25 the over the place. That is not normal. His rpms

1 are all over the chart. If you look at it -- look  
2 at his rpms prior to 9.54.45, his rpms are  
3 consistent all the way through. He's running at  
4 1500 rpms.

5 Now where I would say he hit a little  
6 bit of a hill or mountain is if you look at the time  
7 distance here of 9.50.00. He has a little dip  
8 there. That would say yeah. He was probably  
9 climbing a hill at that point -- a small hill and  
10 lost some rpms. Then he gets back on a consistency  
11 with 1500 rpms. And then here, at 9.55.30 roughly,  
12 he has all kinds of spikes, which is telling me that  
13 there is a significant power failure. And he  
14 would've felt that, too. All of a sudden, he feels  
15 his rpms go right through the roof on his truck  
16 which tells me that somewhere in there is where he  
17 was beginning to get failure on his turbo.

18 Q. What is the likely period of time  
19 that we are looking at here?

20 A. It would be about -- it would be  
21 about maybe 11 minutes. Half of that time in that  
22 11 minutes, he's running along all clean, no  
23 problems at all. And then all of a sudden, he has  
24 these spikes in rpms and he has the decline in power  
25 or fluctuation in power. And that's when his turbo

1 began to fail. I don't know exactly where the pop  
2 began or occurred. But, I would believe it would  
3 probably have happened just before total failure,  
4 which is at that 45. 45 seconds prior.

5 Q. If you look at page four of your  
6 report, down into the section here involving  
7 italics --

8 A. Page four where?

9 Q. Just in the section where you have  
10 started to write in italics.

11 A. Okay. Yep.

12 Q. You rendered some opinions under the  
13 Federal Motor Carrier Safety regulations.  
14 Specifically subsection "383.11 required knowledge."

15 I think my first question is, if a  
16 commercial motor vehicle has a CDL, have they passed  
17 an exam that basically states that they have the  
18 required knowledge of the regulations to operate a  
19 commercial motor vehicle?

20 Yes?

21 A. Yes.

22 Q. You are saying that he doesn't have  
23 this knowledge but he is a CDL driver?

24 A. There is a part under the Federal  
25 Motor Carrier Safety regulations which is 390.3,



1     which is general requirements. Under general  
2     requirements, it requires both the motor carrier and  
3     the driver -- I think it's one -- two and three  
4     under 393.3 -- excuse me. 390.3 that requires both  
5     the motor carrier to have knowledge of the Federal  
6     Motor Carrier Safety regulations and also that the  
7     motor carrier will cause the driver to have  
8     knowledge of the Federal Motor Carrier Safety  
9     regulations. That's what points me back on to  
10    393.111, where he is required, as driver required  
11    knowledge. So, yes. He is entitled to drive a  
12    commercial motor vehicle with a CDL A. With a CDL A  
13    for an 80,000 pound articulating vehicle. But, he  
14    also needs to have the knowledge of the FMCSR.  
15    That's why you have -- motor carriers will issue a  
16    driver a small version copy of this Federal Motor  
17    Carrier Safety regulation that I have right here,  
18    the green one. They'll give him a small copy of it  
19    and say here, read this. Some of them will train on  
20    it. But, he's required to understand what pertains  
21    to him as a commercial motor vehicle operator in  
22    here.

23           Q.           Do you know whether he had a copy of  
24    the FMCSA regulations?

25           A.           FMCSR.

1 I have no idea.

2 Q. Did you read his deposition?

3 A. I did.

4 Perhaps it was issued to him. But, I  
5 just don't -- I don't recall.

6 Q. Would it make a difference, in your  
7 opinion, whether he had one or not?

8 A. Well, it would if he had taken the  
9 time to read it. It doesn't make a difference if he  
10 just put it in his glove compartment and got on the  
11 job and started driving.

12 Q. Subparagraph nine, you said that  
13 these were parts that were not applied by Yelverton  
14 at the time of the crash. You say "Speed  
15 management. The importance of understanding the  
16 affects of speed including speed and traffic flow."

17 There was some testimony earlier that  
18 you really didn't know what the traffic flow was, at  
19 least with respect to Ms. Hartung's deposition  
20 testimony. Does that -- having heard that  
21 deposition testimony change the opinions you are  
22 rendering with regard to speed and traffic flow?

23 A. No.

24 If you look at the fact that he  
25 claims to have been traveling at 5 to 10 miles per

1 hour, that, in my mind, tells me that he violated  
2 that section .9 out of 111 -- part 383.111, where he  
3 didn't manage his speed correctly and recognize that  
4 his speed was becoming a danger to the free flow of  
5 traffic. And by traveling five miles -- allegedly 5  
6 miles an hour in the right lane, which I think he  
7 was at zero. But, you know, just given the fact of  
8 him saying 5 to 10 miles per hour.

9 Q. Under paragraph 12, "Extreme driving  
10 conditions." You have subparagraph, iii where it  
11 says "Extreme driving conditions. The basic  
12 information on operating in extreme driving  
13 conditions and the hazards encountered in such  
14 conditions including mountain driving."

15 You just said that this was a 2  
16 percent grade where the accident happened.

17 A. Yeah. I believe it was 2 percent.

18 Q. So this wasn't particular -- exactly  
19 where the accident happened. This wasn't what you  
20 would consider mountain driving. His inability to  
21 understand mountain driving wouldn't have caused  
22 this accident?

23 A. Well, if he understood mountain  
24 driving, then he would understand going up a grade,  
25 regardless of what that grade is. Because you are

1 going to always have a transition from a one, to  
2 two, to three, to four, to five on a 5 percent  
3 grade.

4 If he were trained on mountain  
5 driving, he would have understood he was going to  
6 have a deceleration issue that's going to be more  
7 quick with a turbo failure or a power failure than  
8 if he was on a flat run say out in Utah.

9 Q. How do you make that -- how does that  
10 -- you make that -- draw that conclusion and then in  
11 15 -- paragraph 15 on page 18, say that this  
12 specific area of I77 is not considered a mountain as  
13 a personal assessment?

14 A. Okay.

15 Q. So how do those two mesh? The two  
16 opinions. This isn't a mountain, but his lack of  
17 training in mountain driving was one of the  
18 contributing factors that you said throughout your  
19 report to this accident.

20 A. State of West Virginia -- the State  
21 of West Virginia is notorious for mountain driving.  
22 They've got runaway truck ramps from West Virginia  
23 down into Tennessee. A driver -- more particularly  
24 on the east side. A driver has got to be cognizant  
25 of driving in those conditions. Motor carrier has

1 an obligation to make sure that that driver is  
2 trained under those conditions, as it is -- as  
3 stated in 383.111 reflecting back on, again, 390.3.  
4 All right? Where the motor carrier has to have that  
5 requirement to train their people.

6 Now if they had trained him on that  
7 correctly -- this is a mountainous region. Don't  
8 get me wrong. This is a mountainous region. Was  
9 this particular spot where this crash occurred a  
10 mountainous region? No. It was mountainous region.  
11 But, was it a mountain at that point in time? No.  
12 But, if he was properly trained under mountainous  
13 conditions how to operate a commercial motor  
14 vehicle, he would've realized that -- once he  
15 started getting this power failure five minutes  
16 prior, it should have registered in his mind that I  
17 could be coming up on a mountain, upon on a hill  
18 that I need to make sure that I get this truck off  
19 the roadway quickly instead of riding it out.

20 Q. The accident, itself, did not happen  
21 on a mountain? Yes or no?

22 A. At -- it happened on the foot of a  
23 hill.

24 Q. I am going to go back to your  
25 paragraph 15 again.

1 A. Sure. It's a hill.

2 Q. "The undersigned's assessment of the  
3 specific area of I77 not being considered a mountain  
4 is a personal assessment." So this wasn't on a  
5 mountain. Right?

6 A. Again, I referred to it as a hill.  
7 It's a slope going up into a hill. The region was a  
8 mountainous region and if he were trained under  
9 mountainous driving, he would've realized -- again,  
10 he would've realized that I'm having a power  
11 problem. I don't know what's up ahead of me here,  
12 whether I'm going to be coming up into an incline  
13 where I'm gonna have a problem so maybe I should  
14 think about getting off at the next exit to figure  
15 out why my truck is losing power. Instead, he gets  
16 on a cell phone and calls daddy.

17 Q. Again, you are expounding on that  
18 which has been asked of you. Again, I am doing my  
19 best not to give you a platform to do that. But you  
20 seem to enjoy --

21 A. Pontification.

22 Q. -- pontification and going back to  
23 the same points, which honestly, when I ask you a  
24 yes or no question as to whether your opinion is  
25 that this doesn't happen on a mountain --

1 A. It's a mountainous region.

2 Q. Where the accident happened.

3 A. This is a hill.

4 Q. I'm gonna read number 15. Are these  
5 your words? "The undersigned's assessment of the  
6 specific area of I77 not being considered a mountain  
7 is a personal assessment"? Are those your words?

8 A. Yes. I consider the area a region.

9 Q. It's a yes or no question. You can't  
10 do that.

11 MS. RAINES: It's been asked and  
12 answered. I think we can move past that.

13 MR. MONTGOMERY: We are moving right  
14 along.

15 Q. On page five, it says "Each of the  
16 afore listed points of required knowledge that are  
17 addressed below respectively as listed." Under  
18 number one, you offered a solution to this problem.  
19 You say they should -- the problem of ensuring that  
20 Yelverton knew exactly what he was to do in the  
21 event of a catastrophic breakdown of the CMV.  
22 Correct?

23 A. That's correct.

24 Q. You state that "They should have  
25 properly trained him in the proper driving

1 techniques when and if he ever suffered a  
2 catastrophic failure whereby in this event, he  
3 suffered a significant and not near complete power  
4 loss."

5 I am just trying to understand what  
6 exactly your opinion is. Did he suffer a complete  
7 power loss, a significant power loss, or a near  
8 complete power loss?

9 A. Substantial near complete power loss.

10 Q. Again, you said before that he was  
11 stopped.

12 A. And I still stick to that.

13 I mean, looking at the ETOG, it  
14 appears that he had stopped -- he was stopped on the  
15 roadway for a brief second -- brief few seconds and  
16 then was struck and then pulled his truck forward to  
17 the shoulder.

18 Q. Wouldn't you describe it, if he was  
19 stopped, as being a complete power loss, not a near  
20 complete power loss?

21 A. Not necessarily. I mean, he's coming  
22 down to the point where -- he's slowing down to the  
23 extent that he can't figure out what's going on.  
24 Likely on his cell phone, suffers a crash where he  
25 brings his truck down to zero miles an hour and then



1 takes his truck off the side of the road.

2 Q. When a tractor trailer suffers a  
3 power loss, what happens? Can it be driven?

4 A. Well, it depends on -- water in the  
5 fuel. I mean, you -- it depends on what the  
6 situation is. You may be able to get it limped off  
7 the highway. There are certain mechanical  
8 situations where you can limp a truck off the  
9 highway. There's other ones that you can't. You  
10 know? You have a total failure of your -- of  
11 electronics in your truck and you have a meltdown  
12 for whatever reason. I'm just speculating.

13 Q. Did you mention water in the fuel?

14 A. Water in the fuel. That would be --

15 Q. What does that have to do with this  
16 accident?

17 A. There's -- you drain the water in  
18 your fuel lines every so often. If you have an  
19 automatic -- there's automatic devices that will  
20 also relieve water from your system. If you don't  
21 have -- if you don't physically drain some of the  
22 older trucks -- drain that water out, it's gonna  
23 clog up your system. It's gonna clog up your fuel  
24 lines and it's going to wind up causing your truck  
25 to hesitate. That could be a similar type of

1 situation.

2 Q. That's not what happened here?

3 A. No. But, I'm using that as an  
4 example. I'm saying there are other type  
5 situations.

6 Q. If you look at your last sentence  
7 here, you say they didn't train it. They should  
8 have properly trained it. At the bottom, you say  
9 "If they opted not to train this, they must ensure  
10 his knowledge and ability to apply the regulation."

11 A. I'm sorry. Which one are you on?

12 Q. That first paragraph under  
13 subparagraph one.

14 Do you know whether they trained him  
15 in this or not?

16 A. I'm basing that on I saw no evidence  
17 of that. All right? That they trained him on  
18 anything of that -- to that effect. They trained  
19 him on Smith System, which is a good training  
20 program. But, I saw nothing from a syllabus  
21 standpoint that said that, you know, Yelverton was  
22 trained and the other drivers were trained in the  
23 event you suffer a catastrophic failure, your truck  
24 breaks down, what have you, get it off the highway.

25 Q. Did you look at the testing materials

1 that he was given?

2 A. I did.

3 Q. Did you see any training for that in  
4 there?

5 A. I don't recall seeing anything like  
6 that.

7 Q. Just by virtue of the fact that he is  
8 a CDL driver, should he not have this knowledge?

9 A. You would think. I mean, he's  
10 trained that he's not permitted to drive a tractor  
11 trailer with a flat tire, for example. He's got to  
12 get his truck off the road immediately to the safest  
13 place of refuge and get it repaired. So, you know,  
14 you would think that that would also translate into  
15 other mechanical issues if you have a malfunction.

16 Now is there anything specifically in  
17 the CDL guidance as far as the driver's manual or  
18 test, itself that says if you suffer mechanical  
19 malfunction, do not park your truck on the highway?  
20 I never saw anything like that and I doubt it.

21 Q. I did it again. Didn't I? I opened  
22 that door. I don't have to open it very far. Do I?  
23 That is a yes or no question.

24 A. Yes.

25 Q. "Speed management" here you have in

1 subsection nine. You say that "The importance of  
2 understanding the effects of speed including speed  
3 and traffic flow." Then you say "They failed in  
4 their very basic duty and requirement of ensuring  
5 they understood the paramount importance of speed  
6 management while operating a CMV." Correct?

7 A. Yes.

8 Q. What information are you relying on,  
9 specifically, as specifically as you can be, that  
10 ATL/KTC failed to train him on this?

11 A. They employed him and he applied his  
12 truck to come to a -- with respect to speed, allowed  
13 his truck to come down to -- that we know of, 5  
14 miles per hour that he testified to 5 to 10 miles  
15 per hour, that right there in my mind is telling me  
16 that he does not understand speed management as it  
17 relates to creating a hazard on the roadway.

18 Q. My question is, it has to do with  
19 training?

20 A. It has to do with training.

21 Q. What information do you have that he  
22 wasn't trained on that?

23 A. I've seen no document that would  
24 indicate as such.

25 Q. So it is not necessarily his

1 behavior. You just don't have any information  
2 concerning -- there's no information in his training  
3 that indicates that?

4 A. It's a combination of both. His  
5 actions and seeing no documents that indicate --

6 Q. You will agree with me in a  
7 hypothetical situation --

8 MR. MONTGOMERY: Tammy, you can  
9 certainly object.

10 Q. -- someone could be trained on  
11 something and then failed to do it. Correct?

12 MS. RAINES: Object to the  
13 hypothetical form.

14 You can answer.

15 A. Oh. Sure.

16 Q. That could happen?

17 A. Sure they could.

18 I would like to see some backup  
19 documentation that shows me that he was trained on  
20 that particular item.

21 Q. Do you have any information either  
22 way as to whether he had his four-way hazards on at  
23 the time of this accident?

24 A. I believe he testified that he did,  
25 although, you know, I don't know -- I don't know if

1 I really choose to -- I believe that Hartung said  
2 that he didn't.

3 So, I really don't choose -- I don't  
4 know if I choose to believe Yelverton based on,  
5 again, him stating that he was -- that he does not  
6 talk on his cell phone when, before the crash, he  
7 was obviously on his cell phone prior to the crash  
8 and before his emergency call to his dad. And then  
9 also him stating that the only reason that I didn't  
10 drive off on to the shoulder was because I didn't  
11 want to drive off the mountain. So all we have here  
12 now is two travel lanes, that's it, no shoulder.

13 Q. Didn't you testify earlier that Ms.  
14 Hartung might not remember exactly what happened  
15 prior to the accident --

16 A. Yeah.

17 Q. -- 'cause she was in a crash, et  
18 cetera?

19 A. Sure. That's why I'm putting more  
20 weight on to Yelverton's credibility.

21 Q. By "putting more weight," do you mean  
22 you choose to believe him or not believe him?

23 A. No. More weight as far as him saying  
24 that he had his four-ways on. I think he would've  
25 said anything at that point after he had time to

1 think about it. Because he's on his cell phone.  
2 He's not even thinking about getting off the  
3 highway. I think the last thing he's thinking  
4 about, okay, let me put my four-way flashers on and  
5 come to a complete stop here on the interstate. I  
6 don't think he was even considering that.

7 Q. Is there any indication in the police  
8 report whether he was cited for not having his  
9 four-way flashers on?

10 A. No.

11 But, then again, when they pulled up  
12 on-site, he had time to put his four-ways on.

13 Q. You talk about the word "safe harbor"  
14 in your report. Right?

15 A. Yes.

16 Q. Under the Federal Motor Carrier  
17 Safety regulations, what is the definition of a safe  
18 harbor?

19 A. I don't believe there is one that I'm  
20 aware of.

21 Q. What is your understanding, as an  
22 expert in the field of Federal Motor Carrier Safety,  
23 as to what a safe harbor is?

24 A. It's more of just a -- an artful term  
25 saying that, you know, it's a place where, you

1 know -- comparatively where a ship would go in the  
2 event of a storm. That's where I -- I've taken that  
3 terminology from, that phraseology is, in the event  
4 of a storm, a hurricane, that ship, you know, is  
5 gonna try to find safe harbor. So, it's just an  
6 artful term that I use in saying that I believe  
7 Yelverton should have exited from the roadway, taken  
8 his commercial motor vehicle off the roadway to  
9 protect others and find a place of safe harbor.

10 Now whether that's the very first  
11 exit that he sees, that would be the most optimal  
12 place to go once he realizes that he has a  
13 mechanical issue.

14 Q. But you will agree with me that he  
15 testified that he didn't know he had a mechanical  
16 issue until he heard the pop?

17 MS. RAINES: Object to form.

18 A. And again, based on the ETOG data I'm  
19 looking at here, if he did not --

20 Q. My question was about his testimony.  
21 Not the ETOG data. Stick with me.

22 A. But, I can't use those independently.  
23 I can't --

24 Q. I can ask you -- did you read Mr.  
25 Yelverton's testimony?



1 A. I did.

2 Q. Yes or no?

3 A. Yes.

4 Q. Did he testify that he didn't know he  
5 was having a mechanical problem? Yes or no?

6 A. Yes. But --

7 Q. There is no but.

8 A. There is a but.

9 Q. It is a yes or no question.

10 A. With respect, Counselor, I have a  
11 right to respond to that.

12 The answer is yes --

13 Q. When I ask a yes or no question --

14 MS. RAINES: He gave you an answer.

15 MR. MONTGOMERY: That's it. Now he  
16 wants to expound on that. I didn't ask him a  
17 question. That's not productive.

18 Q. I understand the desire to want to do  
19 that. You have to sort of work within the confines  
20 of the system that we have to operate in. Okay?  
21 When I ask a question, you can answer it. If it's  
22 an open-ended question, you can give an open-ended  
23 answer. When I say yes no, you have to answer yes  
24 or no. Quite Frankly, it's getting to be somewhat  
25 detrimental to the taking of the deposition. You

1 keep repeating the same, same, same things again. I  
2 don't know that that's necessarily helping.

3 MS. RAINES: What we are going to do  
4 is try to move forward. I would respectfully ask if  
5 you ask him a question, he be allowed to explain his  
6 answer. You can certainly say a yes or no question.  
7 In all due fairness, he should be allowed to give  
8 you the response to which your question was geared.  
9 If you believe he is not being responsive, then you  
10 just let us know. I don't feel like there's been  
11 anything he's not answered here today.

12 MR. MONTGOMERY: If I ask a yes or no  
13 question, that's all I want to know. It's fair and  
14 we all do it. You ask yes or no questions, as do I.  
15 A yes or no question is simply answered by a yes or  
16 no. Not a but and then a ten minute explanation.  
17 Agreed?

18 MS. RAINES: No. I disagree because  
19 I don't want his testimony to be cut off by counsel.  
20 I don't think that's fair.

21 MR. MONTGOMERY: I haven't cut him  
22 off yet.

23 MS. RAINES: Okay.

24 Q. Anyway, back to -- Mr. Yelverton, you  
25 read his testimony. Right?

1 A. I did.

2 Q. He said he didn't know that he was  
3 having a problem with his tractor trailer in the 5  
4 minutes and 15 seconds that you said he was?

5 A. His testimony was that he -- yes.  
6 His testimony was that he said that he did not  
7 believe that he was having a problem with his  
8 commercial truck -- with his truck.

9 Q. So he wouldn't have had any reason to  
10 pull off the road -- pull off the exit. Your  
11 testimony is that he would have passed an exit.  
12 Right?

13 A. He -- within five minutes, no. I'm  
14 sorry. Within the five minutes, he would've gotten  
15 to the Edens Fork exit and he would've seen that  
16 opportunity. He would've had that opportunity to  
17 exit the highway.

18 Q. But if he didn't know he was having a  
19 problem with his tractor trailer, he wouldn't have  
20 any obligation to get off the roadway?

21 A. If he didn't know?

22 Q. Yes.

23 A. I would agree with that. Yes.

24 Q. On page five, when you talk about  
25 "Extreme driving conditions," did you testify

1 earlier that the grade of the road in the area where  
2 the accident occurred is at 2 percent?

3 A. I did.

4 Q. Would you consider that to be an  
5 extreme driving condition?

6 A. No.

7 But --

8 Q. I'll give you the but on this one.

9 A. Okay.

10 The area of the region is extreme  
11 driving with respect to a mountainous driving.  
12 Therefore, the driver should be aware that if he's  
13 experiencing mechanical malfunction five minutes  
14 prior, which I believe that he did, all right, that  
15 he should have known that he's going to potentially  
16 be coming up on another incline somewhere along the  
17 way. And it could be a mountain that's gonna  
18 completely shut him down. All right? In this case  
19 here, it was a 2 percent grade that shut him down  
20 and he should have known that.

21 Q. But this particular grade that he was  
22 on was not an extreme grade. Correct?

23 A. No. This particular grade here, no.  
24 It wasn't.

25 Q. Yet you are still rendering an

1 opinion that he wasn't properly trained under  
2 extreme driving conditions?

3 A. Based on the region of expectations  
4 of the area.

5 MS. RAINES: Is that a yes?

6 Q. Yes?

7 A. Yes.

8 Q. Number 13, you talk about "Hazard  
9 perceptions." What I specifically want to focus in  
10 on was the last sentence where you say "ATL/KTC  
11 should have ensured his understanding as to what to  
12 do when he began to unintentionally and  
13 uncontrollably slow and vehicles around him were  
14 passing him, reasonably assuming vehicles passed him  
15 at 10 a.m., Charleston, West Virginia bound."

16 What I'm focusing on here is, first  
17 of all, you are making an assumption that other  
18 vehicles passed him in order to apply this  
19 particular part of the regulations?

20 A. Yes. It's an assumption over a five  
21 -- five minute period.

22 Q. There was no information that you  
23 reviewed in the record that supports -- necessarily  
24 supports that?

25 A. No. There's -- no. There's nothing

1 in the record that says that -- no. There's nothing  
2 that says that.

3 Q. The first sentence, "When Yelverton  
4 recognized his truck slowing due to a mechanical  
5 malfunction, he should have reacted to the perceived  
6 hazard." Then you say "ATL/KTC should have ensured  
7 his understanding as to what to do when he began to  
8 unintentionally and uncontrollably slow."

9 I take that to mean that he was not  
10 intentionally slowing his tractor trailer down and  
11 he couldn't necessarily control the fact that the  
12 tractor trailer was slowing down. Is that an  
13 accurate assessment of what you have written?

14 A. That's correct.

15 Q. In number 14, we kind of touched on  
16 this earlier, you use the terms "place of safe  
17 refuge" -- the term "A place of safe refuge." Is  
18 that the same as what you mean when you say "safe  
19 harbor"?

20 A. Yes.

21 Q. Would that be the same as what you  
22 would mean when you would say "safe haven" or does  
23 safe haven have a different definition?

24 A. No. They would all be within the  
25 same context.

1 Q. Would that be -- place of safe  
2 refuge, would that be a place off of an exit ramp  
3 perhaps?

4 A. A rest area. You know. Anywhere  
5 where you're out of the potential of a vehicle  
6 striking you.

7 Q. I've dealt with this term quite a bit  
8 in my experience. Would a place of safe refuge be  
9 on an 11 foot improved shoulder?

10 A. If you had no choice, then I would  
11 say yes. It would be as safe as you're gonna  
12 possibly get under the given circumstances. But,  
13 it's not nearly as safe as getting off at Edens Fork  
14 and there's a gas station that's right there at  
15 Edens Fork on the right-hand side. Pulling your  
16 truck in to there and calling a mechanic out to  
17 service your vehicle.

18 Q. How wide is this tractor trailer?

19 A. 102 inches.

20 Q. I think you say 106 in your report.

21 A. No. It should be 102.

22 Q. Did you measure it?

23 A. No. It's just -- it's not a city  
24 truck. So, it would be 102.

25 Q. You do say 102.

1           A.           It's not a city truck. So, it would  
2   be 102.

3           Q.           Did you look up the specifications  
4   for the trailer or the tractor?

5           A.           No. I know -- I'm very familiar with  
6   them. With that type of vehicle.

7           Q.           Again, in number 19, we talk about  
8   mountain driving again. We already discussed, ad  
9   nauseam, that this particular area wasn't a  
10   mountain. I'm just asking, explain to me what  
11   particularly Mr. Yelverton did or what in the  
12   materials you looked at allowed you to come to the  
13   conclusion that you reach in number 19.

14          A.           Well, let me just read it real quick  
15   first.

16          Q.           That always helps.

17          A.           Well, I didn't see any documents that  
18   trained him on mountain driving and the motor  
19   carrier sent him in to that region. Again, the  
20   region which was -- is a mountainous region. West  
21   Virginia is probably the most notorious state on the  
22   East Coast -- eastern part of the country for  
23   mountain driving.

24          Q.           I think they wrote a song about it.

25          A.           So, it's -- there's many songs



1 written on bluegrass about mountains in West  
2 Virginia. Believe me.

3 So, it's a region of the country that  
4 he should have been well familiar with the potential  
5 of coming into another mountain knowing that he  
6 had -- in my opinion, knowing that -- he knew that  
7 he was having mechanical failures because based on  
8 his ETOG, no reasonable driver would be able to  
9 dismiss by saying I had no idea that I was having a  
10 problem until the pop. Based on that, he should  
11 have known, based on the region that he was driving  
12 in, that there is a pretty good likelihood that he  
13 is going to approach other mountain. With a  
14 mechanical failure, a power loss, he should have  
15 recognized that, got his truck off at the very first  
16 opportunity that he had.

17 Q. Let's move on to "5.2. "Unsafe  
18 operations forbidden." In the first paragraph, you  
19 say "The FMCSR strictly prohibits a CMV to be  
20 operated in a condition such that a mechanical  
21 breakdown may occur. Therefore, as soon as a driver  
22 detects a breakdown potential or suspects a concern  
23 that may lead to a breakdown on any roadways, he/she  
24 must seek a place of refuge."

25 Are you saying they should get off

1 the road on an exit ramp there?

2 A. Exit ramp or rest area. Whatever's  
3 available to get them off the travel portion of the  
4 highway -- especially the travel portion of the  
5 highway. Secondarily, the improved shoulder.

6 Q. The improved shoulder is sort of a  
7 last resort?

8 A. Yes.

9 Q. You talk about an exemption to this  
10 particular regulation.

11 A. Well, motor carrier -- I mean, if the  
12 driver knows that there's a place where he can get  
13 his vehicle to that's -- and he can get it there  
14 safely, then he has -- and this is more -- this is  
15 often used in motor carriers dealing with motor  
16 coaches, buses, to get the vehicle to a safe area.  
17 So, if they know that they can get that vehicle to  
18 exit -- if there were, hypothetically, Exit 105 and  
19 105 had a bus repair facility at it, and he's  
20 passing 106 but he's confident that he can get it to  
21 there, then he can move -- he can travel on to that  
22 point. A good example of that would be is if the  
23 driver has a flat tire on the back of his tanker --  
24 on the back of his cargo tank and he's at exit --  
25 where this crash point is right here, he looks back,

1 the crash never happened hypothetically. Looks back  
2 and sees that he has a flat tire, he does not have  
3 to pull over immediately to the roadside -- to the  
4 improved shoulder, the breakdown lane. He can take  
5 it off to the next exit and get the tire repaired at  
6 that location. So, that's the exception.

7 Q. Let me ask you this. Where is the  
8 cutoff? What would be considered too far away as  
9 far as the garage?

10 A. Well, I would look at it -- if you're  
11 unfamiliar with the roadway -- I know that he was  
12 familiar with the roadway because he's traveled it  
13 before. But, don't know if he's familiar with it to  
14 the extent that he can sit here and name for you and  
15 number all the exits. Very few drivers can do that  
16 unless you live on that highway. So, it's somewhat  
17 -- it's not foreign to him, but it's somewhat  
18 foreign to him that he's not on that highway every  
19 single day, traveling that same route every single  
20 day. Then I would say that he probably knows those  
21 exits very well.

22 But, that not being the fact that he  
23 saw Exit 106. He knew that he had problems well  
24 before that. He should have taken the opportunity  
25 to come off Exit 106.

1 Q. Again, he testified that he didn't  
2 know he had problems before Exit 106. I understand  
3 that that's your conclusion that is based on the  
4 ETOG data. I don't know that you can necessarily --

5 A. And experience.

6 Q. -- conclude what the driver knew or  
7 didn't know when he testified that he didn't know.

8 A. And experience as a former truck  
9 driver, too.

10 Q. But that is an important distinction.  
11 It's his judgment call, whether or not to get off  
12 the road. Right?

13 A. Well, it's also his judgment call to  
14 take the truck off to the shoulder, where he says is  
15 a mountainous drop-off and he's gonna crash and he  
16 tried to park it on the shoulder.

17 MR. MONTGOMERY: I am going to object  
18 to that as not being responsive.

19 Q. What is the definition of a  
20 mechanical breakdown under the Federal Motor Carrier  
21 Safety regulations?

22 A. It's a failure of the vehicle to be  
23 able to operate safely.

24 Q. Is that defined under a particular  
25 subsection?

1           A.           It's under definitions under 390.5?  
2   No. 390.5 doesn't define a mechanical breakdown.  
3   But, it does -- you can, pretty much, draw the  
4   conclusion that a mechanical breakdown would refer  
5   to anything that would cause the truck to not be  
6   able to function properly in an unsafe fashion.

7           Q.           Did you review the testimony of Mark  
8   Follett?

9           A.           I did.

10          Q.           Did you, in your review of that  
11   testimony, read the testimony where he stated that  
12   the Kenan drivers are trained to seek a place of  
13   safe refuge in the event of a mechanical breakdown  
14   or failure?

15          A.           I don't specifically recall that.  
16   But, if he did, I didn't see anything from a  
17   syllabus standpoint, any kind of minutes from a  
18   meeting or anything to that effect that trained the  
19   drivers to do that. And obviously based on the fact  
20   that Yelverton just sat on the highway and parked  
21   his truck on the roadway or stopped --

22          Q.           We are talking, again, about  
23   training.

24          A.           I didn't see anything to support  
25   that.

1 Q. Let's go to page seven. Five  
2 paragraphs down in the first sentence, you state "in  
3 all likelihood, Yelverton was aware that he was  
4 having problems with his CMV well before the crash."

5 Is that not inconsistent with the  
6 testimony you have given today where you have stated  
7 that he did know that he was having problems with  
8 his CMV five minutes and 15 seconds before the  
9 crash?

10 A. I think I pretty much have alluded to  
11 all likelihood.

12 Q. We are going to go back and look at  
13 the testimony here. You have consistently --

14 A. Well, I believe that he did. I  
15 believe that he did. But, you know, giving him a  
16 little bit of latitude for his testimony, I'm saying  
17 in all likelihood. So, in my opinion, he did. He  
18 did know that he had a problem.

19 Q. But we stated earlier that whether  
20 the driver had an obligation or duty to pull off the  
21 road was dependent on whether he was able to  
22 perceive whether he had a mechanical breakdown or a  
23 mechanical issue or not. Correct?

24 A. I'm sorry? I drifted on that one.

25 Q. We discussed earlier that the driver

1    -- it is a judgment call on the part of the driver.  
2    Whether he knew he was having a mechanical issue or  
3    not would affect your opinion as to whether he made  
4    the right call.  Correct?

5           A.       That is correct. Yes.

6 Q. Does it make a difference whether you  
7 can testify unequivocally that he knew he was having  
8 a mechanical problem or whether you can testify in  
9 all likelihood, that he had a mechanical problem?  
10 Does that make a difference?

11           A.       I truly believe that he knew that he  
12    was having a problem.

13 Q. Then why give him the latitude that  
14 you gave him in this sentence by saying "In all  
15 likelihood"? If that is what you know, why would  
16 you ever equivocate, as an expert rendering an  
17 opinion, as to fault in an accident like this?

18           A.           I recognize that words have meaning.  
19    But, you know, the simple fact is that by using the  
20    term "In all likelihood," I guess in hindsight if I  
21    were to look back, I would say that he knew. But, I  
22    can't sit here and specifically, without question,  
23    say that Yelverton knew that he -- you know, because  
24    there has to be some room for this saying in all  
25    likelihood because he testified opposite of this.

1           Q.           That is why I am belaboring this  
2 point a little bit. You testified today -- you said  
3 that he knew. I have asked you time and time again  
4 how you know. You have answered me on that  
5 question. Now are you or are you not sort of  
6 equivocating as to whether you can sit here today  
7 and say what he did or did not know?

8                   MS. RAINES: I am going to object to  
9 that form. Asked and answered.

10          A.          My opinion is that yeah, he did know.  
11 All right? In the report, I put "In all likelihood"  
12 based on the fact of his testimony. I'm saying  
13 "In all likelihood" in my report. But, I'm telling  
14 you here in the deposition, that it is my opinion  
15 that he did know that there was something going on  
16 with his truck five minutes prior. Roughly five  
17 minutes prior.

18          Q.          A minute and a half ago, you just  
19 testified -- when explaining the words "In all  
20 likelihood," you said I can't know exactly what he  
21 knew at the time of the accident. Did you not?

22          A.          Right. But, again, I'm going off  
23 ETOG. And that's where I was trying to go before  
24 with the deposition where you had asked me about  
25 Yelverton's deposition. I said yes. But, you have



1 to give me the opportunity to answer with respect to  
2 the ETOG data.

3 The ETOG data demonstrates to me that  
4 any reasonable truck driver of experience would feel  
5 that truck failing, would know that he was having a  
6 power failure. And based on that power failure  
7 approximately five minutes prior to the crash, he  
8 should have reacted accordingly as a professional  
9 truck driver, removed his commercial motor vehicle  
10 from the travel portion of the roadway at a minimum,  
11 if not the exit.

12 Q. Moving along to page eight, again,  
13 you a "Summation of this issue is as follows:  
14 Yelverton knew his CMV was experiencing some degree  
15 of engine difficulty well prior to the point of the  
16 crash, evidence indicates as such and only a totally  
17 disconnected driver would have no awareness of the  
18 gravity of his situation."

19 In this paragraph, you are making the  
20 statement definitively that he did know. Correct?

21 A. Correct.

22 Q. Again, I am going to ask you what  
23 information are you relying on to know what was  
24 going on inside the head of Mr. Yelverton on the day  
25 of the accident.

1 MS. RAINES: Object to the form.

2 Asked and answered.

3 A. If he understands driving commercial  
4 motor vehicles as presumably a professional driver,  
5 there is -- even if he's only got eight hours  
6 experience in his truck or two or three days  
7 experience in this particular truck, he would know  
8 that he's losing -- he is losing power. Not only is  
9 he losing power, but the rpms. His truck, all of a  
10 sudden -- when he's not even stepping on his  
11 accelerator and all of a sudden the rpms go shooting  
12 through the roof just doesn't make sense. It jumps  
13 up 500 rpms. It spikes up -- you would know  
14 instantly that you have a problem with your truck.  
15 There's no question in my mind about it. So, given  
16 the latitude of his testimony saying "In all  
17 likelihood" prior to this, that's where I -- you  
18 know. That's why I said "In all likelihood," based  
19 on his testimony.

20 But my opinion is that he absolutely  
21 knew. And I think that if we even go back to my  
22 opinions, it might reflect that he knew.

23 I guess we'll get to that in a little  
24 while, though.

25 Q. God willing.

1 A. Tomorrow morning some time.

2 Q. In this, you have made commentary  
3 concerning the actions and inactions and what Mr.  
4 Yelverton knew. Correct?

5 A. Yes.

6 Q. Again, you have made no comment,  
7 whatsoever, with respect to the actions or inactions  
8 with respect to Ms. Hartung's operation of her  
9 private motor vehicle.

10 A. Well, if I had information like an  
11 ETOG on hers -- on her vehicle, it would be much  
12 easier to be able to make -- you know, make an  
13 opinion or come up with opinions on that. But, I  
14 don't have that. So, I'm basing it on testimony.

15 But, the answer is no.

16 Q. But you have gone to IPTM school.  
17 Right?

18 A. I did.

19 Q. They have taught you how to make  
20 those sort of -- do that sort of analysis?

21 A. They did.

22 Q. But you didn't in this case?

23 A. Well, it was -- IPTM is more of  
24 dealing with trucks. It's dealing with trucks, not  
25 cars.

1 Q. But they teach you about perception-  
2 reaction?

3 A. Yes.

4 Q. And they teach you about after -- let  
5 me ask you this.

6 Do you know the average amount of  
7 time it would take a private motor vehicle to make a  
8 lane change at the speed that Ms. Hartung was going?

9 A. It's about 300 feet roughly.  
10 Approximately 300 feet. If I'm not mistaken, I  
11 believe it's about 300 feet. And I'm just  
12 estimating that.

13 Q. Did you look at -- is that consistent  
14 with what's in the expert reports of defendants?

15 A. Oh. I don't know. I -- I would have  
16 to -- let me take a look at it real quick. Under  
17 Edwards I believe. Right?

18 Q. Yes.

19 A. 369 feet to move laterally 12 feet at  
20 65 miles per hour.

21 Q. It would actually take longer than  
22 what you said?

23 A. Right.

24 Q. More distance?

25 A. Yes.

1 Q. So you agree with the number Mr.

2 Edwards -- Dr. Edwards used in his report --

3 A. Approximately.

4 Q. Let's turn to page nine of your  
5 report.

6 MS. RAINES: Let's take a quick  
7 break.

8 (Recess.)

9 Q. We are on page nine. If you look at  
10 the top of page nine in your report, you have added  
11 sort of a demonstrative picture here of a Ford F-250  
12 parked on the improved shoulder. Is that correct?

13 A. Yes, sir.

14 Q. Do you remember exactly where you  
15 parked this -- your F-250 on the highway when you  
16 took this picture?

17 A. It was an approximate area of the  
18 crash.

19 Q. When you say "approximate," do you  
20 know how close it was or how far it was?

21 A. As I said earlier, I believe it was  
22 maybe 10 to 15 feet either way, give or take. Just  
23 my best estimates.

24 Q. You note that the F-250 is 6 feet, 4  
25 inches in width. Correct?

1 A. Yes, sir.

2 Q. Where you parked your F-250, is that  
3 about where -- if a tractor trailer were to pull off  
4 the road, where it would be parked?

5 A. Well, no. Because you don't -- it's  
6 not -- it's not recommended, although you can  
7 sometimes. But, it's not recommended to pull a  
8 tractor trailer off on to the soft shoulder because  
9 of a roll factor. You don't know how soft that soft  
10 shoulder may be. If you know that it's been aired  
11 out for a long period of time, then you might be  
12 able to get away from it. In this particular case  
13 here, you know the ground is frozen, so he might be  
14 able to get away with it. Especially a cargo tank  
15 truck you don't want to have on a soft shoulder.

16 Q. According to your report, if the  
17 tractor trailer pulled off the road, you would have  
18 wanted that tractor trailer to be to the left of the  
19 snow area here in the picture that is in your report  
20 on page nine?

21 A. Where the asphalt starts. That's  
22 correct.

23 Q. What is the width of where the  
24 asphalt starts to the fog line?

25 A. Approximately 11 feet.

1           Q.           So that is where you have done your  
2   measurement.  You haven't done it from the  
3   embankment or the soft shoulder?

4           A.           Right. When I measure, I do not  
5   measure the lines. Okay? I only measure between  
6   the lines. Because that's actually technically the  
7   traveled portion of the roadway or the shoulder,  
8   itself.

9           Q.           Moving along, 5.3, again, just for  
10   the record, the standard CMV is 102 inches in  
11   length.

12                    A.            102.    Yes, sir.

13 Q. Do you know what that converts to in  
14 feet?

15            A.        It would be 10 feet, 12 inches.

16 Q. 10 feet, 12 inches would be 11 feet.

17           A.       12 feet is -- 102 inches divided by  
18   12 would be 10 feet.

19 Q. 10 feet?

20            A.            Right. 10 times 12 would be 120.

21 No. No. No. No.

22                               That's -- I'm sorry. That's wrong.  
23    I'm thinking 120. Actually, it's -- I usually just  
24    go by 102.

25 As soon as I do this, I'm gonna say I

1 knew that.

2 Q. That's all right.

3 A. 8.5.

4 Q. The width of the tractor trailer is 8  
5 and a half feet?

6 A. Right.

7 Q. Let's move on to "5.3. Cell phone  
8 usage/distraction."

9 A. Yes, sir.

10 Q. First off, you make some commentary  
11 in your report about when the Federal Motor Carrier  
12 Safety Administration outlawed the use of cell  
13 phones for commercial drivers. Do you know when  
14 that date was?

15 A. It was January 3rd I want to say 2000  
16 -- hold on one second.

17 I believe it was January 3, 2012.

18 Q. It would have been after this  
19 accident?

20 A. Yes, sir.

21 Q. Do you know if that regulation that  
22 was passed applies to hands free cell phones?

23 A. It's -- it is -- it's applicable to  
24 hands free cell phones. That's correct.

25 Q. So now it is illegal to operate a



1 commercial motor vehicle and use any type of cell  
2 phone at all?

3 A. No. You can use -- you can use a  
4 hands free.

5 Q. Oh. You can?

6 A. Yes.

7 Q. Is there any reason why that is?

8 A. You can't dial the phone. So,  
9 basically, essentially would be like a speed dial,  
10 press one button, that type of operation.

11 Q. Is usage, in your opinion, of a hands  
12 free cell phone less distracting than if you are  
13 using a handheld cell phone?

14 A. Well, that depends. Obviously,  
15 you're not going to have one hand on the wheel  
16 unless you have a headset. Okay? Which headsets is  
17 considered -- some of them would be considered hands  
18 free provided that you're not having to dial the  
19 number while you're driving. There's certain  
20 provisions that fall under the cell phone law,  
21 itself.

22 MR. MONTGOMERY: Off the record.

23 (Discussion held off the record.)

24 Q. We were talking about your report on  
25 pages nine and ten basically where you have rendered

1 some opinions with respect to Mr. Yelverton's cell  
2 phone use. We were kind of talking in general  
3 before about the difference between handheld and  
4 hands free. I think your testimony was that in  
5 2012, at some point after the accident, the Federal  
6 Motor Carrier Safety Administration outlawed the use  
7 of handheld cell phones. Is that correct?

8 A. Yes. I believe it was January 3,  
9 2012 if I'm not mistaken.

10 Q. But you are still able to use a hands  
11 free device. Correct?

12 A. That's correct.

13 Q. Why would the FMCSA make that  
14 distinction in your opinion?

15 A. Based on research and studies done by  
16 National Transportation Safety Board of crashes that  
17 have occurred that were resulting from inattentive  
18 driving as a result of cell phone usage.

19 Q. Would that mean that the majority of  
20 those crashes were from handheld cell phones?

21 A. Well, I think that there's also a  
22 lobby factor involved here, too, you know, with the  
23 cell phone industry. But, you know, to completely  
24 outlaw cell phones was not going to happen. But,  
25 the cell phone -- the cell phone restrictions came

1 in from a hands free standpoint around -- I believe  
2 -- again, I believe it was January 3, 2012.

3 Q. It is your opinion, in this case,  
4 that Mr. Yelverton's use of the phone was a  
5 contributing factor to this accident. Correct?

6 A. I believe it was.

7 Q. Did you review Mr. Yelverton's  
8 deposition testimony?

9 A. I did.

10 Q. Did you make a distinction as to  
11 whether he was using a hands free or a handheld cell  
12 phone?

13 A. To the best of my knowledge, he was  
14 using a hands free.

15 Q. Despite knowing that he was using a  
16 hands free, you are still of the opinion that  
17 somehow the use of his -- him using a cell phone  
18 contributed to this rear-end accident?

19 A. I do in addition to it's company  
20 policy, as well, to not use a cell phone while  
21 driving.

22 Q. Is it your testimony that if Mr.  
23 Yelverton had not used his phone at some point --  
24 let me ask you this question actually.

25 Do you know if he was on his phone at

1 the time of the crash?

2 A. I believe that it was just -- he was  
3 on the phone just prior to the crash. So, in other  
4 words, in that 45 second window, some time in that  
5 span of time I believe that he was on his cell  
6 phone.

7 Q. Based on your review of the documents  
8 in this case, do you know where he would have been  
9 on the roadway at that point in time?

10 A. Coming to a coast. Coming to a coast  
11 coming up that slight incline past 106. Just before  
12 the impact.

13 Q. So he would have been past 106 at  
14 that point in time, when he was on his cell phone?

15 A. Let me just take a look at his cell  
16 phone records. Let me hunt those down.

17 Yes. He was on his cell phone at the  
18 time of -- prior to what -- I would believe he was  
19 on his cell phone prior to the exit for 106. Reason  
20 being is that you have a phone call at 9:56 A.  
21 Charleston, West Virginia. And he was on the phone  
22 for three minutes. Then you have a phone call here  
23 at 9:59 A and he was on the -- with the same phone  
24 number. He was on the phone for another two  
25 minutes. And then at 10:02, he was on the phone for

1 one minute.

2 Q. What information are you using as to  
3 where his tractor trailer was on the roadway that  
4 allows you to draw the conclusion that he would have  
5 been before Edens Fork exit?

6 A. Well, looking at the ETOG -- if you  
7 look at the ETOG, you can see 9:59 -- 9:59. He's --  
8 he is just seconds away from the crash, itself. So,  
9 at that point, at the 9:59 call, he would've been  
10 past Edens Fork. At the phone call that ensued at  
11 9:56, that took place at 9:56, that would place him  
12 likely very well before the exit of Edens Fork. And  
13 he was on the phone at that point for three minutes.

14 Q. You didn't do any mathematical  
15 calculations on that?

16 A. No. No, sir.

17 Logic. Looking at it from a logical  
18 standpoint.

19 Q. We did an analysis earlier with 1,260  
20 feet. Correct?

21 A. Correct.

22 Q. In that 45 minutes. That's what he  
23 traveled. We were able to calculate that at that  
24 point in time he was past the Edens Fork exit.  
25 Correct?

1           A.           Yes.

2           Q.           Do you think it would've been helpful  
3     in rendering an opinion with respect to whether he  
4     was on the phone or not contributed to this accident  
5     as to where he was in relation to the crash when he  
6     was on the phone?

7           A.           I don't think that it can be -- I  
8     don't think that there is any mathematical formula  
9     that can narrow that down to specifically where he  
10    was on I77 at a given point in time of his  
11    particular time that he was on his cell phone. I  
12    cannot definitively say and I don't believe that  
13    anybody can say that he was at milepost 110.2 when  
14    that phone call -- original phone call -- for  
15    example, that original phone call ensued and he was  
16    on that phone conversation until milepost 108.5. I  
17    don't think there's any mathematical formula that  
18    you can apply to that encompassed with the ETOG and  
19    the cell phone records. I think it's impossible.

20          Q.           You did just that. On page 16,  
21    paragraph 6, you state "Reginald Yelverton's cell  
22    phone usage during critical moments caused him to  
23    miss observation of Exit 106 likely due to  
24    inattention blindness." You just told me you can't  
25    do it.

1           A.           No. I'm just talking about specifics  
2    as breaking it down from milepost A to milepost B,  
3    that he was on a telephone conversation for that two  
4    minute period. Because his cell phone records,  
5    likewise, don't break it down into seconds. So what  
6    I'm saying in my report is that he had -- obviously  
7    if you take a look at three minutes, three minutes  
8    leading up to this crash at the time of 9:56. So  
9    that puts him on a three minute phone conversation  
10   from 9:56 and how many ever seconds. We don't know.  
11   All right?

12           Q.           Sure.

13           A.           9:56, 9:57, 9:58. All right? Then  
14   it goes to 9:59. So he has a one minute block in  
15   between there. And we don't know whether he picked  
16   up that phone at 9:59:01 a.m. and hung up that phone  
17   at 9:58 and 59 seconds.

18           Q.           We also don't know where his tractor  
19   trailer was on the road either. Do we?

20           A.           As far as -- no. Specific mileage  
21   point? No. That's what I said to you. I said we  
22   can't do that.

23                        But, I can make an educated look and  
24   say that before Exit 106, he was definitely on his  
25   cell phone. There's no question in my mind about

1 that. That period in time, he was he experiencing  
2 engine trouble. Those correlate. If you look at,  
3 again, 9:56, for three minutes, 9:56, 9:57, 9:58,  
4 that gives us three minutes there. So, starting at  
5 9:15 at 15 seconds, 9:55, 45 seconds, he's  
6 definitely experiencing engine trouble. He's  
7 getting massive strikes with his rpms. So, he's  
8 getting large blips in the screens on his rpms. So,  
9 he knew there was an engine problem. So, he's now  
10 talking to dad or somebody and saying I've got a  
11 problem here. He comes up on Exit 106, goes past  
12 it, on the phone again for two minutes, and then  
13 winds up with the crash.

14 Q. You have to commit to a position.  
15 You can't say that we can't tell where on the road  
16 he was when he was on the phone but say when he was  
17 going past 106 he was on the phone. That's what you  
18 just did.

19 Can you tell where he is on the  
20 roadway when he is on his phone? Yes or no?

21 MS. RAINES: Object to the form.  
22 Asked and answered.

23 A. You cannot -- you cannot narrow it  
24 down with specificity exactly where he was located.  
25 But, we can make an educated assumption here that



1 three minutes prior to the crash, we're looking at  
2 now two minutes -- a two minute phone conversation  
3 and a three minute phone conversation which is five  
4 minutes. That five minutes occurred within this  
5 span of time here. We know that about four-fifths  
6 of a mile before the crash point was the location of  
7 Exit 106. So, obviously, it didn't take him five  
8 minutes to go from 106 to -- based on the speed,  
9 from 106 to the crash location, four-fifths of a  
10 mile. So, we know that he was much further back.  
11 So, he's just engaged in conversation, passes by 106  
12 and says in deposition that he never even saw the  
13 exit. Inattention blindness.

14 Q. Your testimony is you can't tell  
15 where he was on the roadway when he was on the  
16 phone?

17 A. Again, with specificity, I cannot sit  
18 here and tell you with absolute certainty that at  
19 milepost 110.2 he made a phone call.

20 Q. You can say that he passed 106 then?

21 A. He was on the phone before he got to  
22 106.

23 Q. But was he on the phone when he drove  
24 past 106? That is the question I am asking you.  
25 You are telling me that you can't tell with

1 specificity. Therefore, I don't think you can  
2 answer that question in the affirmative.

3 A. I can. I can.

4 Because if you're looking at the  
5 phone call at 9:59, which was for two minutes, 9:59,  
6 10, 10:01. Now the phone company, they break these  
7 down in rounded off minutes. We don't know where  
8 that phone conversation ended and how many seconds  
9 such as the ETOG breaks it down for us in detail of  
10 increments of seconds.

11 So, if you're looking at 9:59 A, here  
12 we have -- 9:59 is right here. He's experiencing  
13 engine trouble. He is at least well before the Exit  
14 106.

15 Q. At 9:59?

16 A. Because at this point, he's doing 65  
17 miles per hour. He's doing 65 miles per hour at  
18 this particular time, at 9:58:30.

19 Q. How far in front of Exit 106 was he?

20 A. Oh. Coming -- approaching 106.  
21 Approaching 106. He said in testimony that he never  
22 each saw the exit. Now a professional commercial  
23 motor vehicle operator would be looking for  
24 something like that if he had been focused on the  
25 task at hand. And that's getting his truck to a

1 safe refuge.

2 Q. Was it possible he just didn't  
3 remember seeing the exit? This happened June 29th  
4 of 2011. He was deposed over three years later.

5 A. Is it possible that --

6 Q. Is it possible? That is a hard  
7 question to answer, but I am asking it.

8 MS. RAINES: I will object.

9 You can answer.

10 A. If -- you know, is it impossible to  
11 recognize that if the young lady's computer is on  
12 fire and the fire extinguisher is on the wall there?

13 Q. Now you are asking questions with  
14 questions. That's completely unfair.

15 Let me ask you this. I really want  
16 to be straight about this. I'm very confused by  
17 your testimony with respect to where you can tell he  
18 was on the road when he was on his cell phone. You  
19 have told me that you can't say where he was  
20 specifically but yet you have come up with an  
21 explanation which makes no sense to me as to why you  
22 can say he drove past 106 when he was on the phone.

23 A. Let me try to explain it again.

24 MS. RAINES: Objection to the  
25 question. I believe it's been asked and answered,

1 thoroughly explained, and a little bit of  
2 mischaracterization.

3 But have at it.

4 A. I will try to explain it again to  
5 you.

6 I will break it down into finite  
7 detail here.

8 At 9:54 and 45 seconds was just prior  
9 to him experiencing some degree of engine trouble.  
10 Within seconds. Okay? That's 9:54 and 45 seconds.  
11 All right?

12 Q. Okay.

13 A. Then somewhere in the time of 9:56, a  
14 phone call occurred. Either it was inbound or  
15 outbound. I'm not quite certain. All right? Hold  
16 on one second here.

17 I don't know who he was speaking to  
18 at this point. I think that Mr. Yelverton, Senior  
19 had to have a different cell phone number because he  
20 was speaking to his dad at this point -- at a later  
21 point -- at this point, as well. But, we weren't  
22 provided with that phone number. We were provided  
23 with another phone number that belonged to a Chris  
24 Adams, which really kind of confused the issue a  
25 little bit. That call is not recorded on there.

1 It's recorded to the (910) 514-5780.

2 So, again, at 9:56 a.m. was within  
3 the threshold of time that he was experiencing  
4 engine trouble. Okay? Because again, the engine  
5 trouble began just shortly after 9:54 and 45  
6 seconds. Okay?

7 Q. Yes.

8 A. Now at 9:56, he was at -- he was  
9 traveling at approximately 50 miles per hour. His  
10 rpms were all over the place at this point in time  
11 and they had been for a minute prior.

12 Q. How fast was he going?

13 A. He, at that point, was doing 50 miles  
14 an hour. At 9:50. All right?

15 His rpms are all over the place.

16 Excuse me. At 9:56. 9:56.

17 His rpms are all the over the place.  
18 So, he's had now -- oh, boy. Maybe about a minute  
19 and a half, two minutes of engine problems that he  
20 determined that obviously there was something going  
21 on here.

22 Q. My question relates --

23 A. Let me finish. I would like to  
24 finish with this response because I don't want to  
25 confuse you again.

1                   Then at 9:59 a.m., again, we don't  
2   have a definitive number as to seconds from that  
3   phone call. That's from the cell phone service. At  
4   9:59 a.m., that puts him on to his second phone  
5   call. Whether it was inbound or outbound, I'm not  
6   quite certain. I believe that one would be outbound  
7   because he's making a call as testified to by him  
8   and his dad. His dad made the original phone call  
9   at that 9:56 or believed it was his father.

10                  Then at 9:59, his speed is -- again,  
11   after fluctuating substantially throughout that  
12   period of time, his speed is at 55 miles an hour  
13   and, again, his rpms are all over the chart, which  
14   is not normal for a commercial motor vehicle. And  
15   an experienced driver would feel that, whether he  
16   was driving his truck or driving a substitute truck  
17   for only a day. He would he feel that. He would  
18   know it. All right? That's at 9:59. Now that  
19   phone call takes place for two minutes.

20                  The crash occurred -- we can agree  
21   that the crash occurred at approximately 10 -- it  
22   would be about 10 -- bear with me a second. About  
23   10:40. 10.00.40. That puts him in to that phone  
24   call. At 9:59, that would put him in to that phone  
25   call. Because that phone call now is for two

1 minutes. So, it's 9:59, 10, 10:01. So if you take  
2 that time and you look at that compared to the ETOG,  
3 that puts him right in the crash. So, in all  
4 likelihood, he was actually on his phone at the time  
5 of the crash.

6 Q. That's not the question.

7 A. That definitely -- the question is  
8 would that put him past the exit of Edens Fork. By  
9 example of everything I just laid out, it certainly  
10 would put him past the exit because it occurred  
11 after Edens Fork.

12 Q. He had already past Edens Fork when  
13 he was on his phone?

14 A. Yes.

15 But, no. He was -- he was on his  
16 phone prior to that with his first conversation that  
17 began at 9:56, which lasted three minutes.

18 Q. Okay. Again, how can you determine,  
19 with specificity, that he was on his phone when he  
20 drove past the exit? That is one of the opinions  
21 that you rendered in your report. I don't think you  
22 can.

23 A. 9:56 -- again, 9:56, 9:57, 9:58. The  
24 next call is 9:59, 10 o'clock. That's five minutes  
25 of almost solid conversation here because you have

1 9:56 for the first call is three minutes. Second  
2 call is 9:59 with two minutes. That's a total of  
3 five minutes. So, he loses the call -- you lose the  
4 call with somebody. I'm not gonna ask the question  
5 but I'll say that if I lose a call with my wife, I  
6 hit resend immediately. "Hey, I lost the call."  
7 It's not let's wait two, three minutes. That's  
8 demonstrated by this report right here from the  
9 phone company.

10 Q. You did an analysis of the ETOG data.  
11 You have relied on that analysis to determine  
12 certain distances that he traveled. Correct?

13 A. Yes.

14 Q. Did you ever determine how far, based  
15 on the ETOG -- how long from the ETOG data -- how  
16 much time elapsed from the point he passed 106 to  
17 the accident location? Did you ever do that  
18 calculation?

19 A. I'm sorry. Repeat that one more  
20 time.

21 Q. Did you ever calculate how much time  
22 elapsed between when Mr. Yelverton passed 106 to  
23 when the accident happened?

24 A. No.

25 Q. Let's go to page nine. If I'm



1 looking at the last paragraph, which spills on to  
2 the next page, it says "Perhaps Yelverton was not  
3 properly trained with respect to cell phone usage."

4 I am just trying to -- what is your  
5 opinion in this matter? To me, that sort of seems  
6 like you are equivocating there.

7 MS. RAINES: Object to the form. I  
8 think I am confused by it.

9 Go ahead.

10 A. Not a -- I don't believe so. I mean,  
11 it's -- I'm saying that Yelverton, you know, perhaps  
12 he was -- he's not clear on the cell phone policy.  
13 And he should've been taught as such by his father  
14 slash coach about the cell phone policy.

15 Q. Perhaps. What does the word  
16 "perhaps" mean to you?

17 MS. RAINES: Object to the form.  
18 It's argumentative. Hypothetical.

19 A. I -- it's -- in my opinion, his  
20 father did lead him down the wrong road. So, it's  
21 not a perhaps. It's an actual. His father taught  
22 him incorrectly.

23 Q. That is not what you put in the  
24 report. That's why I'm asking the questions.

25 A. Okay. Fair enough.

1           Q.           Moving along. 5.5. We have already  
2   kind of covered the comments with respect to Mr.  
3   Yelverton's credibility. We can move past that.

4                       Look at page 14. I found this  
5   particular excerpt to be interesting. You note here  
6   that "Based on the plethora of CMV crashes  
7   investigated by the NTSB, then NTSB Chairwoman  
8   Hersman stated the following regarding "professional  
9   drivers" on July 12, 2010."

10                      I will read the italics. "Truck  
11   drivers are held to a higher standard than the  
12   average driver and need to address issues  
13   accordingly. In addition, they are professional  
14   drivers and the standard of care and the level of  
15   expectations for them and their performance are  
16   higher."

17                      First of all, who is Chairwoman  
18   Hersman?

19           A.           Then Chairwoman of the NTSB.

20           Q.           Where did she make this statement?

21           A.           It was National -- excuse me.  
22   Transport Topics Magazine, which you may be familiar  
23   with from American Trucking Association. It was in  
24   a conference and they printed it.

25           Q.           So this was a statement that she made

1 during a speech?

2 A. That's correct.

3 Q. To your knowledge, has this been  
4 codified into law in any way, shape, or form?

5                      A.                      No.                      No.

6 Q. To your knowledge, you have rendered  
7 opinions with respect to Mr. Yelverton's driving in  
8 the State of West Virginia, is there any case law or  
9 any legislation in the State of West Virginia that  
10 holds commercial motor vehicle drivers to a higher  
11 standard of care than someone driving a private  
12 motor vehicle?

13 MS. RAINES: Object to the form and  
14 to the point that it is a legal conclusion.

15           A.           No. Well, I think that based on the  
16 fact that a commercial motor vehicle driver has to  
17 go for an additional driver's license, CDL, and so  
18 forth, is required to understand, under 390.3, the  
19 entire Federal Motor Carrier Safety regulations,  
20 that they need to have a better understanding of the  
21 fact that they're driving an 80,000 pound -- now  
22 that's whether on plaintiff or defense. I recognize  
23 that a commercial motor vehicle operator does have a  
24 higher degree of standard of care.

25 Q. Can you point to any case law or any

1 statute that says -- we are talking specifically  
2 about standard of care. That they are held to a  
3 higher standard of care?

4 MS. RAINES: Object to the form.  
5 Asked and answered.

6 A. I'm just -- I am reciting Secretary  
7 Hersman's --

8 Q. But that is not a law.

9 A. No. Of course it's not a law.

10 Q. Do you know of any law?

11 A. No.

12 But, again, it as a standard of care  
13 that I see as a standard that is out there based on  
14 the fact of driver training that's required, et  
15 cetera. A car -- person driving a car can come in  
16 from the country of India and have a driver's  
17 license in about a week. You take that same person  
18 and he's gonna have to go through a much more  
19 in-depth training program in order to be able to  
20 drive a commercial motor vehicle.

21 Q. I did it again. Didn't I?

22 "7.0. Nexus of Kenan Advantage Group  
23 companies." Why did you render an opinion with  
24 regard to the interrelationship between Kenan and  
25 Advantage Tank Lines?

1           A.           It was just something I saw on some  
2 documents that I felt were kind of -- they were --  
3 some of the training documents and so forth. I  
4 believe they're training. Where above on the driver  
5 qualification, they have various companies rather  
6 than individual, independent.

7                       Now, I'm a former CEO of a nationwide  
8 company and I would make sure that we kept  
9 separation of the companies -- they're two companies  
10 actually. We kept separations of our corporations.  
11 So, it was HMHTTC Response Incorporated and SL  
12 Turner & Son Waste Transport. We kept them  
13 independent of each other where we had employees for  
14 the trucking operation, we had employees for the  
15 response company. And we tried at our best, not to  
16 comingle training or anything like that because  
17 there are two separate entities and we don't want to  
18 have any kind of bleed over in the event of a  
19 problem.

20                      So, I noticed in the documents  
21 provided by -- through discovery that there were --  
22 almost seemed to me to be inseparable in addition  
23 to, you know -- it didn't seem like a real extensive  
24 lease agreement either.

25           Q.           Did you look at any information,

1 outside of what was provided to you by counsel, in  
2 rendering your opinion with regard to the nexus in  
3 7.0?

4 MS. RAINES: Your question is other  
5 than what is listed?

6 MR. MONTGOMERY: Yes.

7 A. Other than what's been provided? No.  
8 I haven't looked outside of that.

9 Q. We are now on 8.0. We may be able to  
10 fast track through this. We probably talked about  
11 most of it --

12 A. Most of it.

13 Q. -- as we went through the report.

14 Paragraph one, again, the words  
15 "contributing factors to the crash." Contributing  
16 factors. It is your opinion that there was a number  
17 of different contributing factors to this crash.

18 A. No.

19 I always use terminology  
20 "contributing factors." A contributing factor would  
21 be things like Yelverton failing to pull his vehicle  
22 to the roadside. You know. Yelverton failing to  
23 pull his vehicle off Exit 106. So, there is a  
24 number of them.

25 But, to answer your question, yes.

1           Q.           Again, Ms. Hartung's inability to  
2     perceive and react to the tractor trailer in front  
3     of her, in your opinion, is not a contributing  
4     factor to the crash?

5           A.           I believe that there is a -- it is a  
6     much lesser contributing factor than the factors of  
7     Yelverton parking his truck, for all intent and  
8     purposes, on Interstate 77.

9           Q.           So her actions were a contributing  
10    factor, but a lesser contributing factor?

11          A.           To a much, much lesser extent.

12                   MS. RAINES: Object to the form.

13          Q.           So you are admitting that she did  
14    something wrong?

15                   MS. RAINES: Object to the form.  
16    Mischaracterization of testimony.

17          A.           I don't know for a fact that she did.  
18                   She had a collision with the vehicle.  
19    Right? She had a collision with the vehicle. So --  
20    with the vehicle that was parked in front of her.  
21    Now looking at it from that standpoint, I don't  
22    think that she was -- that she was contributing -- a  
23    contributing factor. The -- as she's approaching  
24    that vehicle, could she have cut off to the left a  
25    little bit quicker? I don't know for certain. But,

1 that, in my mind, may have been a slight  
2 contributing factor.

3 Q. I will just take that.

4 Number two, second paragraph,  
5 "Yelverton's failure to comply with FMCSR and the  
6 standard of care were contributing factors to the  
7 crash that occurred."

8 What do you mean when you say  
9 "standards of care"? That is kind of a legal term.  
10 I am asking what you mean when you put that in that  
11 report.

12 A. Well, parking a truck on a highway --  
13 an interstate highway. There's -- I don't think  
14 that there's anything out there that specifically  
15 says that because nobody can imagine that somebody  
16 would actually park their truck on a highway. A  
17 professional truck driver would take the truck off  
18 the road surface. Off the travel portion of the  
19 highway.

20 Q. Again, the words "contributing  
21 factors." So there is more than one factor?

22 A. Yes.

23 Q. What is your understanding of what  
24 inattention blindness is? Let me back it up.

25 You have attached, as an exhibit to



1 your report, the "National Safety Council  
2 understanding the distracted brain." What was the  
3 purpose of attaching this to your report?

4 A. Well, it's -- I relied on it pretty  
5 heavily in that Yelverton, in spite of his company  
6 policy of not using his cell phone while operating  
7 his truck and him testifying that he doesn't use his  
8 cell phone while driving his truck, uses his cell  
9 phone regardless. The distracted brain white paper  
10 is discussing not necessarily phone usage, but hands  
11 free cell phone usage and why it's so dangerous.  
12 And it causes a state of inattention blindness.

13 Q. I am asking, what is inattention  
14 blindness?

15 A. Where you get focused on one thing.  
16 You're focusing on -- you can't multitask. The old  
17 multitasking thing. All right? Where you're --  
18 inattention blindness is where you're paying  
19 attention to one thing and missing the other things  
20 around you. It's the most simplistic way of  
21 explaining it. So, you're focusing -- you can only  
22 really focus on one thing. But, you're focusing  
23 your attention on that, where you're missing other  
24 things that may be going on that are important to  
25 that environment. That's the reason that you have

1 -- drivers are supposed to scan the road and things  
2 like that.

3 Q. All drivers are supposed to scan the  
4 road?

5 Yes?

6 A. Commercial motor vehicle drivers are  
7 trained in the Smith System to make sure that they  
8 scan the road.

9 Q. Does a driver of a private motor  
10 vehicle also have an obligation to scan the road and  
11 pay attention?

12 A. Right. All drivers.

13 Q. Right. That is what I was asking.

14 You have no information or haven't  
15 formed any opinion that Mr. Yelverton knew that this  
16 accident was going to happen. Correct?

17 MS. RAINES: Object to the form of  
18 the question.

19 A. At what point in time?

20 Q. Does it make a difference?

21 A. I mean, did he wake up in the morning  
22 and say I'm gonna get into a crash today? I don't  
23 think that happened.

24 Q. When he was driving his tractor  
25 trailer.

1           A.           Well, just seconds before, he had  
2   said to his father, apparently on the cell phone,  
3   that I'm about to get hit, or this lady's gonna plow  
4   into me, or something to that effect. So, in terms  
5   of him knowing he was going to be involved in a  
6   crash, yes. That's why I asked for a definition of  
7   time.

8           Q.           How long, before he was struck in the  
9   rear, to your recollection, was it before -- when he  
10  said that to when he was actually struck?

11          A.           I believe it was just seconds.

12                       MR. MONTGOMERY: Let's take a break.

13                       (Recess.)

14          Q.           Have you ever reviewed or, in your  
15  capacity as an expert, looked at the passenger  
16  vehicle driver's manual?

17          A.           I have. But, not, you know, with any  
18  -- I've never really opined on it in any way.

19          Q.           You talk about logic and commonsense  
20  when coming to certain conclusions and opinions you  
21  have rendered in this case. Whether or not you  
22  have, you know, verbatim memory of it I don't think  
23  matters for this next series of questions. You are  
24  familiar with it and you are familiar with the  
25  obligations and duties of a driver of a passenger of

1 a motor vehicle. Yes or no?

2 A. Yes.

3 Q. Is it your understanding that a  
4 driver of a passenger motor vehicle has a duty to  
5 control themselves and their vehicles?

6 MS. RAINES: Object to the form and  
7 legal conclusion.

8 A. They do.

9 Q. And they have a duty to be alert and  
10 be ready to respond to traffic around them?

11 A. They do.

12 Q. Is it your opinion in this case that  
13 Ms. Hartung was alert and ready to respond to the  
14 traffic around her?

15 MS. RAINES: Object to the form.

16 A. Well, I know that she attempted an  
17 evasive maneuver. Whether she had enough time to  
18 get around that vehicle, obviously that didn't  
19 occur. But, she attempted an evasive maneuver,  
20 which tells me that she was at least somewhat aware  
21 of what was going on. She was aware of what was  
22 going on. Other than that, it would've been just a  
23 dead-on rear impact.

24 Q. When she would have reacted, it  
25 would've been too late. Correct?

1 MS. RAINES: Object to the form.

2 Q. Or she would have avoided the  
3 accident.

4 A. Yeah. Well, you're closing speed at  
5 65 miles an hour then seeing that -- observing that  
6 at 500 -- roughly 400 to 500 feet and needing 300 --  
7 about 300 feet to make the lane change, that's where  
8 I think that -- you know. Did she get her lane  
9 change quick enough? Apparently not. Did she  
10 attempt that lane change? You know, maybe she's not  
11 as quick and as confident in making that quick  
12 emergency maneuver lane change as other folks might  
13 be, like myself.

14 Q. Again, when you use 500 feet, that is  
15 an accepted numerical figure with respect to when  
16 she should have perceived that there was a problem.  
17 Right?

18 MS. RAINES: Object to form.

19 A. At the testified to speeds.

20 Q. 1.5 perception-reaction time, that's  
21 also an accepted numerical figure with respect to  
22 perception-reaction time, also. Correct?

23 MS. RAINES: Same objection.

24 A. One says 1.5, one says 1.6. But, I  
25 go by 1.5.

1           Q.           What is that based on? Is that the  
2   average response time?

3           A.           It is.

4           Q.           Does the driver of a private motor  
5   vehicle have an obligation to look ahead and scan?

6                       MS. RAINES: Object to the form.

7           A.           Yes.

8           Q.           Do they have an obligation or duty to  
9   look ahead and scan the road for vehicles that may  
10   be in the road by the time you reach them?

11                      MS. RAINES: Same objection.

12          A.           Yes.

13          Q.           Do they have an obligation to look  
14   ahead for signs warning of danger?

15          A.           They do.

16          Q.           Do they have an obligation to look  
17   ahead for traffic conditions that may require speed  
18   reduction, breaking, or stopping?

19                      MS. RAINES: Same objection.

20          A.           They do.

21          Q.           Does a driver of a private motor  
22   vehicle have an obligation to keep a cushion of  
23   space around the vehicle?

24          A.           They're not trained as such. I mean,  
25   there's no training, to the best of my knowledge,

1     like a commercial motor vehicle driver is about -- I  
2     don't believe that there's any space cushion  
3     training, if you will.

4             Q.             But does the manual say that they  
5     should?

6             A.             Yes.

7                     MS. RAINES: Object to the form.

8                     When you say "manual," so I'm clear,  
9     are you referring specifically to Ms. Hartung's  
10    manual or --

11                    MR. MONTGOMERY: No. Driver's  
12    manual. He knows what I'm talking about.

13             A.             State of West Virginia Driver's  
14    Manual.

15             Q.             Does that also state to the driver of  
16    a private motor vehicle that the only way to be sure  
17    that they will have enough time to react is to leave  
18    plenty of space between your vehicle and the  
19    vehicles around you?

20             A.             Yes.

21             Q.             And that the key to anticipate what  
22    could -- the key is to anticipate what could happen  
23    and to be able to stop in time?

24             A.             Yeah. But, this is not a tailgating  
25    issue. That's referring to tailgating somebody.

1 Q. Have you ever heard of the four  
2 second rule?

3 A. I have.

4 Q. What does the four second rule say?

5 A. Following distance from a fixed  
6 object.

7 Q. Does that rule also say that a driver  
8 should constantly try and maintain their vehicle's  
9 position so that no matter what may occur while  
10 driving, a four second interval with respect to time  
11 and distance would give the driver an opportunity to  
12 avoid a potentially dangerous situation?

13 A. If she had a vehicle that was  
14 traveling 65 miles in front of her or 55 miles an  
15 hour or something to that effect, I would agree.  
16 Yes.

17 MR. MONTGOMERY: Off the record.

18 (Recess.)

19 Q. Mr. Turner, have you ever been  
20 certified to testify as an expert in any Federal  
21 Court in the United States?

22 A. I know that State Court and Federal.  
23 I'm not sure which was which. But, I'm not a  
24 hundred percent certain.

25 Q. Have you ever been certified to



1     testify as an expert in state court?

2             A.         Yes.

3             Q.         When I say "certified," I mean  
4     somebody challenged your qualifications and  
5     credentials and a judge ruled that you were  
6     certified to testify as an expert.

7             A.         Yes.    Yes.

8             Q.         You have?

9             A.         Yes.

10            Q.         How many times?

11            A.         My reports have a tendency to keep me  
12     out of trial.    So, I think it's only been three  
13     times if I'm not mistaken.

14            Q.         So you have been certified as an  
15     expert in three separate courts and you are not sure  
16     whether that was in state or federal?

17            A.         Yeah.    I know that one was out in  
18     Allegheny County.   I believe it was Allegheny  
19     County, itself.

20            Q.         That would be in Pittsburgh?

21            A.         Yes, sir.

22                        But, that was -- there was a truck  
23     explosion in a terminal.   Loading rack.

24                        The other two, I'm not certain if  
25     they were federal or state.   I just don't recall.   I

1 can find out, though.

2 Q. Who did you testify for in Allegheny  
3 County? Do you remember the lawyer?

4 A. Sure. It was -- do you have that  
5 list by chance? That's easy enough.

6 Q. Here it is.

7 A. Yeah. It was completely nonrelevant,  
8 though, to this type matter here.

9 Wendy O'Connor.

10 Q. Do you know what law firm she is  
11 with?

12 A. No, I don't. She's -- the firm that  
13 she was with at that point, she's trans -- she's  
14 moved on to another firm now.

15 Q. In what capacity were you certified  
16 as an expert?

17 A. At a loading rack. There was a  
18 explosion. A tank explosion. And a guy got  
19 injured. So, essentially, it was a loading rack  
20 explosion on a cargo tank truck.

21 Q. You obviously weren't testifying as  
22 an accident reconstructionist.

23 A. No. No. It's commercial motor  
24 vehicle slash hazmat expert.

25 Q. On the other two occasions, do you

1 remember what, specifically, you testified about?

2 A. I -- no. I -- I don't remember  
3 specifically what they were. I could find out.

4 Q. Have you ever been certified to  
5 testify in any court as an accident  
6 reconstructionist?

7 MS. RAINES: Object to the form. It  
8 is a legal term.

9 You can answer if you know.

10 A. No. I don't believe so.

11 Q. Other than this commercial motor  
12 vehicle/hazmat expert testimony that you have given,  
13 you don't remember in what capacity you were  
14 certified in the other two courts?

15 A. No.

16 But, you know -- oh. There was one  
17 up in Boston, too as a matter of fact. There's one  
18 up in Boston. Again, I'm not sure if that was  
19 federal or not. I just don't recall. And that was  
20 dealing with off tracking. An off tracking related  
21 matter.

22 Q. Did you do a reconstruction?

23 A. No.

24 Q. You didn't testify in that case as an  
25 accident reconstructionist?

1 A. No.

2 Q. Just so I am clear, none of those  
3 three occasions wherein you were certified to  
4 testify in court were you -- did you do a  
5 reconstruction in any of those cases?

6 A. No, sir.

7 Q. You didn't testify as an accident  
8 reconstructionist in any of those cases?

9 A. No.

10 Q. Looking at your report, I apologize  
11 if you put it away, page 14, you note that you  
12 inspected the site extensively at the point of the  
13 crash to the point of Exit 111, approximately six  
14 miles preceding the approximate crash location. You  
15 state that you observed in excess of 20 commercial  
16 motor vehicles traveling in the southbound  
17 direction. Then you gave some sort of commentary on  
18 the speed of those motor vehicles. What was the  
19 purpose of doing that?

20 A. It was at the point of the estimated  
21 crash -- the approximate crash area. And just  
22 watching these commercial motor vehicles going up  
23 that hill, none of them were going down where  
24 Yelverton was trying to say that the reason that his  
25 truck was cutting back to 5 to 10 mile an hour was

1 because of lagging and as well as the experts. I  
2 think it was Rickard said the same thing. It was  
3 because of climbing a mountain.

4 Q. This was a six mile area. Correct?

5 A. Yes.

6 Q. And in the six miles prior to the  
7 accident, based on the ETOG data, you testified  
8 today that Mr. Yelverton was going 45 miles per hour  
9 at some point in time. Correct?

10 A. Right. Yep.

11 Q. And you use 50 miles per hour as the  
12 cut off with regard to your perception or your best  
13 guess as to how fast those vehicles were going.  
14 Correct?

15 A. It was plus or minus 50 miles per  
16 hour.

17 Q. But you do admit that you didn't use  
18 radar. Right?

19 A. No, sir. I mean, it's just from, you  
20 know, however many years I've been driving. It's  
21 been considerable -- I'm 52 years old. I've been  
22 driving since I was 17. So --

23 Q. And you also note that you have no  
24 training in determining a CMV speed by visual  
25 observation?

1 A. No.

2 Q. When you use 50 miles an hour as a  
3 cut off, is that what you would consider to be a  
4 safe speed in that area?

5 MS. RAINES: Object to form.

6 A. No. It wasn't for that purpose. I  
7 wasn't demonstrating the 50 miles per hour for that  
8 purpose. I was demonstrating that 50 miles per hour  
9 in showing that the commercial motor vehicle  
10 involved in this crash, Yelverton's truck, was not  
11 hindered by a mountain, the reason that he was doing  
12 only 5 to 10 miles per hour, as he stated.

13 Q. You specifically refer to 20 motor  
14 vehicles. Did you record any data or take any notes  
15 with regard to those 20 commercial motor vehicles  
16 you observed?

17 A. What? Like, license plate numbers  
18 and stuff like that?

19 Q. The type of truck.

20 A. No. No.

21 Q. What they were hauling?

22 A. They were 80,000 -- looking at them  
23 as they're going by, they all look to be 80,000  
24 GBWR, gross vehicle weight rating, registered as  
25 80,000. They're all 18 wheelers that I included

1 into this count. This approximate 20.

2 Q. Do you know if they were loaded?

3 Empty?

4 A. No. I would -- I would think --

5 knowing the driving industry, very few trucks going

6 down a road are driving around empty because

7 deadhead miles don't get you any revenue. So,

8 you're looking at out of those 20 trucks, I'll

9 guarantee you that 15 of them -- at least 15 of them  
10 were loaded.

11 Now if you're in an industrial area,

12 you may have trucks that are empty going from one

13 location to the other. But, you're out on an

14 interstate heading into Charleston. Highly unlikely

15 somebody's gonna send a truck 150, 200 miles empty.

16 Q. There's no hard data or information

17 upon which you are relying to state, as we are

18 sitting here today, that those were all loaded

19 vehicles?

20 A. No. No. I would doubt very, very

21 highly that they were all empty, though.

22 Q. Upon that, you are basing Mr.

23 Yelverton's tractor trailer should have been able to

24 travel 50 miles per hour up that hill?

25 A. Oh. Easy. Yes, sir.

1                   At that point, as he goes further up  
2   that hill, though, he might lag down a little bit  
3   more. But, at that point where the crash occurred,  
4   he should've been able to accomplish at least 50  
5   miles per hour.

6           Q.       Based on your visual observation --

7           A.       That's correct.

8           Q.       -- of those 20 commercial motor  
9   vehicles?

10          A.       And experience.

11          Q.       Did you look at the documents when  
12   you were formulating your opinions as to what Mr.  
13   Yelverton was loaded with at the time of the  
14   accident?

15          A.       I -- if I'm not mistaken, it was  
16   liquid asphalt, which is an HOT load. Hot load.  
17   Elevated temperature material.

18          Q.       Do you know how many pounds or did it  
19   matter in your analysis?

20          A.       No. Of course it would -- it would  
21   -- if it were empty, it would certainly be a factor.  
22   But, they -- they run these tanks full. They're not  
23   going to run them half full or something like that  
24   on a long trip that he's taking with this liquid  
25   asphalt. So, if I'm not mistaken, he would have a



1 full load on, which would put him close to that  
2 80,000 mark.

3 Q. That is all the questions that I  
4 have.

5

6 BY MS. RAINES:

7 Q. Just very briefly, you have given the  
8 opinions that you hold in this case based upon the  
9 information that you have been provided presently.  
10 Is that correct?

11 A. That's correct.

12 Q. If, after your deposition today, you  
13 formulate any additional opinions, I do ask that you  
14 would provide them to me and thus I can provide them  
15 to defense counsel. Is that fair?

16 A. Of course.

17 (Deposition concluded at 4:14 p.m.)

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C E R T I F I C A T E

I HEREBY CERTIFY that the witness  
was duly sworn by me and that the deposition is a  
true record of the testimony given by the witness.

---

GINA A. FAROLDI, CCR  
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